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# SMALL BUSINESS MOTOR FUEL MARKETER PRESERVATION ACT—H.R. 6722

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## JOINT HEARINGS

BEFORE THE

SUBCOMMITTEE ON
ANTITRUST AND RESTRAINT OF TRADE
ACTIVITIES AFFECTING SMALL BUSINESS

OF THE

COMMITTEE ON SMALL BUSINESS

AND

SUBCOMMITTEE ON CONSUMER PROTECTION
AND FINANCE

OF THE

COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

H.R. 6722

A BILL TO AMEND THE SMALL BUSINESS ACT TO PROVIDE SPECIAL LOAN GUARANTEES TO SMALL BUSINESS CONCERNS FOR THE ACQUISITION OF MOTOR FUEL SERVICE STATIONS, TO REQUIRE THE DIVORCEMENT OF SUCH STATIONS FROM OPERATION BY CERTAIN PRODUCERS AND REFINERS OF MOTOR FUELS, TO CONTROL SALES BY PRODUCERS AND REFINERS OF MOTOR FUELS, AND FOR OTHER PURPOSES

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WASHINGTON, D.C., MAY 20, 21; JUNE 4 AND 5, 1980

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**Serial No. 96–196**

(Committee on Interstate and Foreign Commerce)

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the Committee on Interstate and Foreign Commerce

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# SMALL BUSINESS MOTOR FUEL MARKETER PRESERVATION ACT—H.R. 6722

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## TUESDAY, MAY 20, 1980

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON ANTITRUST AND RESTRAINT OF TRADE ACTIVITIES AFFECTING SMALL BUSINESS, OF THE COMMITTEE ON SMALL BUSINESS, AND THE SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCE, OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,

*Washington, D.C.*

The subcommittees met, pursuant to notice, at 9:35 a.m., in room 2322, Rayburn House Office Building, Hon. Berkley Bedell (chairman of the Subcommittee on Antitrust and Restraint on Trade Activities Affecting Small Business) and Hon. James H. Scheuer (chairman of the Subcommittee on Consumer Protection and Finance) presiding.

### OPENING STATEMENT OF CHAIRMAN SCHEUER

Mr. SCHEUER. Today will commence a joint hearing on H.R. 6722, the Small Business Motor Fuel Marketer Preservation Act between the Antitrust and Restraint of Trade Subcommittee, chaired by Hon. Berkley Bedell, and the Subcommittee on Consumer Protection and Finance of the Interstate and Foreign Commerce Committee.

On May 8 we heard a presentation from the Department of Energy on the first part of a report exploring the allegations that major oil refiners subsidize their owned and operated service stations. Today we will receive testimony from Hon. Berkley Bedell, the cochairman of these hearings, and as I mentioned, chairman of the Antitrust Subcommittee on the Small Business Committee and the principal author of the legislation.

We are all greatly indebted to Chairman Bedell for the splendid leadership he has shown in putting this piece of legislation together. I am happy to follow his leadership in cosponsoring the bill and in holding these joint hearings.

Before our hearings, Congressman Bedell's subcommittee held extensive hearings on the general problem this bill is addressed to meet. I want to thank him for the enormous amount of work and thought that he has invested in bringing this bill to the point where it is now.

[H.R. 6722 was amended by the Antitrust Subcommittee and the Small Business Committee. See Appendix O for the text of H.R. 6722, as amended. The text below is as originally introduced:]

96th CONGRESS
2d Session

# H. R. 6722

To amend the Small Business Act to provide special loan guarantees to small business concerns for the acquisition of motor fuel service stations, to require the divorcement of such stations from operation by certain producers and refiners of motor fuels, to control sales by producers and refiners of motor fuels, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

March 6, 1980

Mr. Bedell (for himself, Mr. Smith of Iowa, Mr. Hanley, Mr. Hall of Ohio, Mrs. Snowe, and Mr. Tauke) introduced the following bill; which was referred jointly to the Committees on Small Business and Interstate and Foreign Commerce

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# A BILL

To amend the Small Business Act to provide special loan guarantees to small business concerns for the acquisition of motor fuel service stations, to require the divorcement of such stations from operation by certain producers and refiners of motor fuels, to control sales by producers and refiners of motor fuels, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* SHORT TITLE

SECTION 1. This Act may be cited as the "Small Business Motor Fuel Marketer Preservation Act of 1980".

FINANCIAL ASSISTANCE TO SMALL BUSINESS CONCERNS ACQUIRING MOTOR FUEL RETAIL OUTLETS

SEC. 2. (a) The first sentence of section 7(a) of the Small Business Act (16 U.S.C. 636(a)) is amended—

(1) by striking out "or" before "to finance"; and

(2) by inserting after "sale" the following: "; and to participate on a deferred basis in loans under this section to any person acquiring a motor fuel service station from a refiner without regard to whether such loan is primarily for the acquisition of land.".

(b) Section 3 of the Small Business Act (16 U.S.C. 632) is amended by adding at the end thereof the following: "The terms 'refiner' and 'motor fuel service station' have the meanings set forth in paragraphs (2) and (8), respectively, of section 3(f) of the Small Business Motor Fuel Marketer Preservation Act of 1980.".

DIVORCEMENT OF MOTOR FUEL SERVICE STATIONS; LIMITATION ON RETAIL SALES OF MOTOR FUEL BY REFINERS

SEC. 3. (a)(1) Notwithstanding any other provision of law, it shall be unlawful for any refiner, other than an independent refiner or a small refiner, to operate any motor fuel service station in the United States.

(2)(A) Any interest in any motor fuel service station may be disposed of by a refiner to any person other than the dealer at such station only if such dealer was offered a right of first refusal of an offer made by the refiner to sell such interest.

(B) For purposes of subparagraph (A), a dealer at a motor fuel service station is considered to be offered a right of first refusal of an offer made by the refiner to sell an interest in the station only if—

(i) the refiner gives the dealer, in writing, an exclusive 60-day option to accept an offer to sell such interest, and

(ii) in any case in which, during such 60-day period, the dealer makes a counteroffer, in writing, to purchase such interest at a different price, the refiner, during the 30-day period following the date of the counteroffer—

(I) agrees, in writing, to the counteroffer, or

(II) submits to the dealer, in writing, a revised offer to sell the interest to the dealer at a price to be determined by an independent appraisal meeting the standards prescribed by the Commission pursuant to subparagraph (C) and undertakes such an appraisal within such time and in such manner as shall be prescribed by the Commission by regulation.

(C) The Commission shall prescribe by regulation standards which must be met with respect to an appraisal in order for such appraisal to be considered an independent appraisal for purposes of this paragraph.

(b)(1) Notwithstanding any other provision of law, it shall be unlawful for any refiner—

(A) to sell at motor fuel service stations operated by the refiner in any State during any calendar year an amount of motor fuel which causes the refiner sales ratio of the refiner in that State for that year to exceed the refiner sales ratio of the refiner in that State for calendar year 1978; or

(B) to sell during any calendar year at motor fuel service stations operated by the refiner in any State an amount of motor fuel which is greater than—

(i) an amount of motor fuel equal to the lesser of—

(I) 50 percent of the excess of the amount of motor fuel sold, consigned, or distributed by the refiner in that State in that calendar year over the amount of motor fuel described in clause (ii), or

(II) the excess of the amount of motor fuel sold, consigned, or distributed by the refiner in that State in that calendar year over the amount of motor fuel described in clause (ii), multiplied by the refiner sales ratio in that State for that calendar year, plus

(ii) the amount of motor fuel sold by the refiner during calendar year 1978 at motor fuel service stations operated by the refiner in the United States.

(2) Not later than 180 days after the date of the enactment of the Competition in Motor Fuel Marketing Act of 1980, the refiner sales ratio of each refiner in each State for calendar year 1978 shall be determined by the Commission.

(c)(1) Notwithstanding any other provision of law, except as provided in paragraphs (2) and (3), it shall be unlawful for any refiner to sell motor fuel at any time at any point of transfer at different prices for any basic unit of motor fuel, except that nothing in this paragraph shall be construed to prevent differentials in prices of motor fuel which make only due allowance for differences in the cost of manufacture, sale, or delivery of such motor fuel resulting from the differing methods or quantities in which such motor fuel is sold or delivered. A refiner shall be considered to have violated the provisions of this paragraph in any case in which the refiner withholds some of the refiner's available motor fuel from any sale, at a point of transfer of the motor fuel from the refiner to purchasers of the motor fuel, and subsequently sells such motor fuel at motor fuel service stations operated by the refiner at prices below the prices at which, if the refiner had purchased the motor fuel at the point of transfer at the price then in effect, the refiner would have had to sell such motor fuel at such stations in order to obtain the same profits on the sale.

(2) Nothing in paragraph (1) shall be construed to prevent a refiner from charging any person a uniform and reasonable surcharge in connection with a sale of motor fuel to the person as consideration for the use by the person of a trademark, trade name, service mark, or other identifying symbol or name and any services associated with such use.

(d)(1) Notwithstanding any other provision of law, it shall be unlawful for any person to restrain, interfere with, or in any way prevent the purchasing from another, the storing, or the selling of motor fuel by any dealer.

(2) Notwithstanding any other provision of law, it shall be unlawful for any dealer, at a motor fuel service station displaying a trademark, trade name, service mark, or other identifying symbol or name owned by a refiner, to sell motor fuel which is not refined by such refiner without providing reasonable notice at the point of sale to purchasers of such

motor fuel that such motor fuel is not provided by such refiner.

(e)(1) Not later than 3 months after the date of the enactment of the Competition in Motor Fuel Marketing Act of 1980, and annually thereafter, each refiner shall provide in writing to the Commission—

(A) the number of gallons of motor fuel sold, consigned, or distributed during the preceding calendar year by the refiner in each State,

(B) the number of gallons of motor fuel sold at motor fuel service stations operated by the refiner during the preceding calendar year by the refiner in each State,

(C) the number of barrels of crude oil produced during the preceding calendar year by the refiner, and

(D) the number of barrels of crude oil refined during the preceding calendar year by the refiner.

(2)(A) Not later than 90 days after the date of the enactment of the Competition in Motor Fuel Marketing Act of 1980, and annually thereafter, each person described in subparagraph (B) (other than a refiner) shall provide in writing to the Commission—

(i) the number of gallons of motor fuel sold, consigned, or distributed during the preceding calendar year by the person in the United States,

(ii) the number of gallons of motor fuel sold at motor fuel service stations operated by the refiner during the preceding calendar year by the person, and

(iii) the number of motor fuel service stations owned by the person or related persons in the United States during the preceding calendar year.

(B) A person is described in this subparagraph if such person owned during the preceding calendar year 50 or more motor fuel service stations in the United States.

(3) Not later than 3 months after the date of the enactment of the Competition in Motor Fuel Marketing Act of 1980—

(A) each refiner shall provide in writing to the Commission the information described in paragraph (1) with respect to calendar year 1978, and

(B) each person who owned 50 or more motor fuel service stations in the United States in calendar year 1978 shall provide in writing to the Commission the information described in paragraph (2)(A) with respect to such calendar year.

(4) The Federal Trade Commission shall not require from any person information referred to in the preceding provisions of this subsection to the extent that the Commission is able to obtain such information from agencies or departments of the United States.

(f) For purposes of this section:

(1)(A) The term "producer" means any person engaged in the production or importation of crude oil or refined crude oil products.

(B) Such term includes any related person with respect to such person.

(2)(A) The term "refiner" means—

(i) any person engaged in the refining of motor fuel, and

(ii) any producer for whom refining of crude oil produced by such producer is performed under contract.

(B) Such term includes, when used in connection with any person described in clause (i) or (ii) of subparagraph (A), any related person with respect to such person.

(3) The term "independent refiner" means a refiner who obtained, directly or indirectly, in calendar year 1978, more than 70 percent of the refiner's refinery input of domestic and imported crude oil from producers who are not related persons referred to in paragraph (2)(B).

(4) The term "small refiner" means a refiner whose total refinery capacity does not exceed 175,000 barrels per day.

(5) The term "related person" means, with respect to any other person—

(A) a person who holds a significant ownership interest in such other person;

(B) a person in whom such other person holds a significant ownership interest; and

(C) a person in whom a third person holds a significant ownership interest while holding a significant ownership interest in such other person.

(6) The term "significant ownership interest" means—

(A) with respect to any corporation, 5 percent or more in value of the outstanding stock of such corporation,

(B) with respect to a partnership, 5 percent or more interest in the profits or capital of such partnership, and

(C) with respect to an estate or trust, 5 percent or more of the beneficial interests in such estate or trust.

For purposes of determining significant ownership interest, an interest owned by or for a corporation, partnership, trust, or estate shall be considered as owned directly both by itself and proportionately by its shareholders, partners, or beneficiaries, as the case may be.

(7) The term "motor fuel" means gasoline, diesel fuel, alcohol, or any mixture of any of the foregoing, suitable for use as a fuel in self-propelled vehicles designed primarily for use on public streets, roads, and highways.

(8) The term "motor fuel service station" means any facility at which motor fuel is sold at retail.

(9) The term "refiner sales ratio" means, in any State for any calendar year, when used in connection with a refiner, the fraction—

(A) the numerator of which is the number of gallons of motor fuel which was sold at motor fuel service stations operated by the refiner during such calendar year by the refiner in that State; and

(B) the denominator of which is the number of gallons of motor fuel which was sold, consigned, or distributed during such calendar year by the refiner in that State.

(10) The term "sell at retail" means to sell to the general public for ultimate consumption.

(11)(A) Except as provided in subparagraph (B), the term "dealer" means a person who occupies as a retailer a motor fuel service station.

(B)(i) When used in subsection (d)(2), the term "dealer" means, with respect to a refiner, a person described in subparagraph (A) who occupies the motor fuel service station under lease or rental agreement with the refiner.

(ii) Notwithstanding clause (i), a person described in such subparagraph shall not be considered a dealer if the lease or rental agreement is with a refiner in connection with whom such person is a related person referred to in paragraph (2)(B).

(12) The term "operate" means, when used in connection with a motor fuel service station, to engage at such station in the business of selling motor fuel at retail through any employee or commissioned agent of the refiner whose duties include such selling of such motor fuel.

(13) The term "basic unit" means, in connection with motor fuel—

(A) a dealer tankwagon or transport load;

(B) a railroad tank car load;

(C) a barge load; and

(D) a pipeline tender.

(14) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, joint-stock companies, trustees and re-

ceivers in bankruptcy and reorganization, common-law trusts, or any organized group, whether or not incorporated.

(15) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, Guam, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(16) The term "United States" means the several States (as defined in paragraph (15)).

(g)(1) Any person who violates any provision of subsection (a)(1) shall, upon conviction, be punished by a fine of not to exceed $50,000 per month for each motor fuel service station operated during such month in violation of such subsection.

(2) Any person who violates any provision of subsection (a)(2) shall, upon conviction, be punished by a fine not to exceed $50,000 for each such violation.

(3) Any person who violates any provision of subsection (b) shall, upon conviction, be punished by a fine not to exceed $25,000 for each 25,000 gallons of motor fuel sold in excess of the amount permitted under such subsection.

(4) Any person who sells motor fuel in violation of subsection (c) shall, upon conviction, be punished by a fine not to exceed $10,000 for each such sale.

(5) Any person who violates any provision of subsection (d)(1) shall, upon conviction, be punished by a fine not to exceed $50,000 for each such violation.

(6) Any person who violates any provision of subsection (d)(2) shall, upon conviction, be punished by a fine not to exceed $10,000 for each such violation.

(7) It shall be the duty of the Commission to commence a civil action for appropriate relief, including a permanent or temporary injunction, whenever any person violates any provision of subsection (a), (b), (c), or (d). Any action under this paragraph may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance.

(h)(1) If any person fails to comply with the requirements of this section, any other person directly affected by such failure may maintain a civil action against such person failing to comply with such requirements for damages and appropriate equitable relief, including temporary and permanent injunctive relief. If the plaintiff prevails in any action under this section, the plaintiff shall be entitled to reasonable attorney and expert witness fees to be paid by the defendant, except that in any case in which the court determines that only nominal damages are to be awarded to the plaintiff, the court may, in its discretion, determine not to direct that such fees be paid by the defendant.

(2) Such action may be brought, without regard to the amount in controversy, in the district court of the United States in any judicial district in which the principal place of business of such person is located or in which such person is doing business.

(i)(1) Subsections (a)(1), (b)(1), (c), and (d) of this section shall take effect 1 year after the date of the enactment of this Act.

(2) The Federal Trade Commission shall prescribe the initial regulations required by the provisions of this section before the end of the 180-day period beginning on the date of the enactment of this Act.

Mr. **Scheuer**. After Congressman Bedell testifies, the rest of the morning will be devoted to the testimony of the Federal agencies most directly concerned: The Federal Trade Commission; the Department of Energy; and the Small Business Administration.

In addition, we will hear from the comptroller of the State which has had the most experience with this kind of legislation, Hon. Lewis Goldstein of Maryland. We are very happy to have the comptroller here.

As an accommodation to the comptroller and in recognition of the distance he has to come in order to share his views with us, we will hear from him directly after we hear from Chairman Bedell.

I regret that I will not be able to spend the entire morning here with you on this very important piece of legislation. My subcommittee is bringing to the floor this afternoon the Federal Trade Commission authorization bill. As you know, that has been the perils of Pauline for so many weeks running, and I am going to have to do some last minute prepping and priming on that.

It is no small tribute to my colleague, Mr. Bedell, that at least 60 Members of the House, from both sides of the aisle, have endorsed this bill. That includes Members from the north, the south, the east and the west; urban, rural, every variety of constituency is represented in the more than 60 Members who have cosponsored this really provocative and thoughtful piece of legislation that Congressman Bedell has put together, really single handedly. It is a piece of legislation I am honored to cosponsor under his leadership and cochair these joint hearings.

Without any further ado and wasting anybody's precious time, I would like to call on Congressman Bedell to testify. After that, I will turn the chair over to him for the rest of the morning's proceedings.

Congressman Bedell, take it over.

## TESTIMONY OF HON. BERKLEY BEDELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

Mr. **Bedell**. Thank you very much, Mr. Chairman.

In 1979 the House Small Business Subcommittee on Antitrust, which I chair, conducted a total of eight hearings on gasoline marketing practices. There were 5 days of hearings here in Washington, D.C., and field hearings from Sioux City, Iowa; St. Louis, Mo.; and Dayton, Ohio. In all, the hearing record fills three volumes and includes testimony from over 100 individuals.

Out of these hearings there grew a clear sense of the difficulties confronting small and independent businesses seeking to survive and grow in the gasoline retailing industry. They are caught in a terrible squeeze between a burdensome Federal regulatory system and increasing competition from the oil companies and refiners who are their suppliers.

We found there was a net loss of approximately 80,000 gasoline dealers between 1973 and 1979. The rate of attrition remains at the very high level of about 10 percent a year. At the same time that the number of independent dealers was shrinking so dramatically, refiners managed to double the total volume of gasoline sold through their direct operated outlets.

We heard testimony from the marketing vice president of one major oil company who testified that they viewed their company operated outlets as being in direct competition with the dealer network they had developed earlier.

Many of us on the subcommittee were dumbfounded by the notion of a major refiner competing with dealers whose rents they control, whose product, supply, and price they control, whose credit terms and advertising they controlled, and so forth. This did not conform with our notion of fair competition.

The Petroleum Marketing Practices Act of 1978 was intended to end arbitrary actions by refiners against their dealers. However, the PMPA deals almost solely with the problem of lease termination. It does not address other forms of pressure that can be exerted. In fairness to the authors of "The Dealer Day in Court Law," I should say it would be a truly herculean task to list all the possible forms of pressure that can be brought to bear on the dealers, and it would be even tougher to write a law that would prohibit them one by one.

For an illustration of how pervasive is the effect of refiner controls over dealers, we have only to look at the situation with gasohol marketing. We have heard reports from many who say they would like to sell gasohol—indeed, who say their customers want to buy gasohol—but whose refiner/suppliers are preventing them from marketing this product. Not only does this violate the notion of the dealers being independent businessmen, it also stands in the way of implementing our national policy of promoting the use of alcohol fuels.

A new problem is only now emerging. That is the arbitrary price differential between branded and unbranded gasoline. Products sold to dealers and jobbers who sell under the trade name of a refiner costs more than a product that is intended for sale without the brand name on it. The rationale is that the added cost reflects the expenses of advertising, national credit card systems, promotion of the brand, and so forth.

In recent years, though, there has been increasingly less brand name advertising, and what advertising there is tends to be more institutional or advocacy in nature rather than product oriented. Most refiners have changed their credit policies so that it now costs dealers more to handle the company credit cards, and several companies have actually stopped issuing new credit cards. Promotional activities today exist chiefly in our memories.

Despite these changes, branded dealers and jobbers remain stuck with a higher priced product and little to show for it in the way of added benefits. Increasingly, we see their refiner/suppliers going into the same market and underselling them with unbranded products.

Finally, it should be noted that independent marketers look at Federal regulations with decidely mixed feelings. On the one hand, they are subjected to price controls that frequently bear little relationship to reality, and they are unable to increase the gallonage at their stations the way refiners can. On the other hand, many marketers acknowledge that without Federal regulation they might be subject to even more to the whims of the refiners.

In many ways the Federal regulatory structure today acts as a buffer between the handful of big oil companies and the many smaller firms who market their products. When Federal controls are withdrawn, it is possible that changes in the gasoline marketplace may be even more dramatic than what we have witnessed under controls.

We are now looking at the scheduled expiration of Federal controls regulating gasoline marketing in just 16 months. Therefore, this is an appropriate time to be considering whether structural changes are needed in the gasoline marketplace.

Currently, there is a reliance upon Federal regulations to give smaller companies some measure of protection against predatory practices by major integrated oil companies and big refiners.

Instead, I believe we should be looking for ways to make the independent business operator better able to compete on a fair and equal basis in the marketplace. Where there is true, meaningful competition, there should be little need for Government intervention.

And I should insert here that one of the concerns I think that exist and the reason we are looking at this legislation is because of what we may need as we come in to complete deregulation and decontrol.

With this in mind, the Small Business Motor Fuel Marketer Preservation Act, H.R. 6722, was drafted. It is premised upon an environment of decontrol and it is intended to give small and independent businesses an opportunity to compete on equal terms in the gasoline marketplace.

On March 6, I introduced this bill, joined by a bipartisan majority of the members of the Subcommittee on Antitrust and the chairman of the full Small Business Committee. We now have a total of 60 cosponsors.

I would like, at this time, to submit a list of the cosponsors of the legislation for the record, Mr. Chairman.

Mr. **Scheuer**. No objection, it is so ordered.

[The cosponsors follow:]

### SPONSORS AND COSPONSORS OF THE SMALL BUSINESS MOTOR FUEL MARKETER PRESERVATION ACT—H.R. 6722, H.R. 6849, H.R. 7034 (AS OF MAY 20, 1980)

Mark Andrews, Don Dailey, Al Baldus, Michael Barnes, Berkley Bedell, James Blanchard, John Burton, William Carney, Don Clausen, Tony Coelho, Silvio Conte, John Conyers, Lawrence Coughlin, Norman D'Amours, Charles Dougherty, Tom Downey, Robert Drinan.

John Duncan, Bob Edgar, Don Edwards, Arlen Erdahl, Vic Fazio, Hamilton Fish, James Florio, Newt Gingrich, Tony Hall, Jim Hanley, Tom Harkin, Margaret Heckler, Bob Kastenmeier, Dale Kildee, John LaFalce, Tom Luken, Dawson Mathis.

George Miller, Don Mitchell, Parren Mitchell, Robert Mollohan, Austin Murphy, Steve Neal, James Oberstar, David Obey, Richard Ottinger, Edward Patten, Claude Pepper, J. J. Pickle, Richardson Preyer, Nick Rahall, Fred Richmond, Martin Sabo, James Scheuer.

John Seiberling, Neal Smith (Iowa), Olympia Snowe (H.R. 6849), Gladys Spellman, Fernand St Germain, Harley Staggers (H.R. 7034), Al Swift, Tom Tauke (H.R. 6849), Mo Udall, Jim Weaver, William Whitehurst, Lester Wolff, Howard Wolpe, Herb Harris.

Mr. **Bedell**. I would also like to submit for the record, a detailed summary of the Small Business Motor Fuel Marketer Preservation Act in order to save time. I think most people are aware of what is in the act.

Mr. SCHEUER. Both of these insertions will appear with your testimony.

[The detailed summary follows:]

### THE SMALL BUSINESS MOTOR FUEL MARKETER PRESERVATION ACT INTRODUCED BY MR. BEDELL, ET AL.

#### SUMMARY OF KEY PROVISIONS

*1. Divorcement; "refiner sales ratio"*

Effective one year after date of enacement, major refiners will be prohibited from directly operating any retail gasoline outlets. The refiners exempted from the prohibition on operating service stations generally are those classified as small or independent refiners according to the Emergency Petroleum Allocation Act.

Effective one year after date of enactment, all refiners will be subject to a "refiner sales ratio" restriction. This means that the ratio of sales through refiner-operated stations as compared to total sales could not exceed the ratio achieved in 1978.

The refiner sales ratio will be established for each refiner in each individual state. If the refiner increases the amount of product sold in a state, the proportion of additional product sold in refiner-operated stations may not exceed the refiner sales ratio or 50 percent, whichever is less.

*2. Dealers' rights; SBA loan guarantees*

The proprietor of any leased service station that is offering for sale after enactment of this legislation shall have the right of first refusal to purchase that station if it is offered for sale. SBA loan guarantees are made available by this act for such purposes.

The following procedures shall be used in offering a gas station for sale to the leaseholder:

First, the owner of the property shall make an offer to the proprietor. The dealer has 60 days to consider the offer.

Second, the proprietor may make a counter offer. If this is not accepted, an independent appraisal of the value of the property shall be made, subject to rules to be established by the FTC. The dealer will have the right to purchase the property at the appraised price within 30 days.

*3. Open supply*

Effective one year after date of enactment, it shall be unlawful for anyone to interfer with the right of a dealer to purchase, store or sell product obtained from anyone else. Provided, however, that dealers operating branded stations must provide point-of-sale notice to customers if product being sold was not obtained from the brand-name supplier.

*4. Rack pricing*

Within one year after date of enactment, all refiners, producers and distributors of motor fuel will be prohibited from charging different prices at point of transfer if buyers are purchasing similar quantities of product. "Similar quantities" means purchases in quantities equal to dealer tankwagon, railroad car or barge capacity. To the extent that the supplier can show actual cost differences for providing different quantities of product, the pricing may reflect those differences. Uniform and reasonable surcharges may be imposed on purchasers who will sell under a trademark or brand name (reflecting real costs of advertising, credit cards, etc.).

*5. Information required*

Within three months after date of enactment, refiners must provide the following information to the Federal Trade Commission: (a) total amount of motor fuel sold in refiner-operated outlets in 1978, both nationwide and in each state; (b) total amount of motor fuel sold or delivered to all customers in 1978; both nationwide and in each state; (c) total amount of crude oil produced in 1978; and (d) total amount of crude oil refinered in 1978. Persons who do not own refineries but who own or operate 50 or more service stations shall report on the number of stations they own or control and the total amount of gasoline they sell, both nationwide and in each state. The FTC shall establish regulations for annual reports. To the extent that the information sought is available from other agencies of the government, the Commission may waive reporting requirements.

*6. Penalties: Enforcement*

Violation of this Act shall be punishable by fines of up to $50,000 per month for each station operated after the deadline for divorcement, and up to $25,000 for each 25,000 gallons of motor fuel sold in excess of the amount permitted by the retail sales ratio. Violation of the rack pricing provision is punishable by fines of up to $10,000 per violation. Responsibility for enforcement is given to the FTC. In addition, individuals may bring civil actions against anyone who fails to comply with the Act.

Mr. BEDELL. Thank you, Mr. Chairman.

I should say the purpose of these hearings is to look at this legislation and see how we might further improve upon it. I don't think anyone pretends that any legislation is ever perfect as it is first drafted. I want to thank you very much for the cooperation I have had from Mr. Scheuer and certainly the members of my subcommittee who have been most helpful in this effort.

I think I would be remiss if I didn't also thank all of these people who have had input into this legislation. Few people would agree with everything that is in any piece of legislation, but in my opinion we have had tremendous help from all segments of the industry as well as from our committee, and I thank you very much for your cooperation in this whole matter.

[Chairman Bedell's prepared statement follows:]

## PREPARED STATEMENT OF HON. BERKLEY BEDELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

In 1979 the House Small Business Subcommittee on Antitrust, which I chair, conducted a total of eight hearings on gasoline retail marketing practices. There were five days of hearings in Washington, D.C., and field hearings in Sioux City, Iowa; St. Louis, Missouri; and Dayton, Ohio. In all, the hearing record fills three volumes and includes testimony from over 100 individuals.

Out of these hearings there grew a clear sense of the difficulties confronting small and independent businesses seeking to survive and grow in the Gasoline retailing industry. They are caught in a terrible squeeze between a burdensome federal regulatory system and increasing competition from the oil companies and refiners who are their suppliers.

We found that there was a net loss of approximately 80,000 gasoline dealers between 1973 and 1979. The rate of attrition remains at the very high level of about 10 percent a year. At the same time that the number of independent dealers was shrinking so dramatically, refiners managed to double the total volume of gasoline sold through their direct-operated outlets. We heard testimony from the marketing vice president of one major oil company who testified that they viewed their company-operated outlets as being in direct competition with the dealer network they had developed earlier. Many of us on the Subcommittee were dumbfounded by the notion of a major refiner "competing" with dealers whose rent they controlled, whose product supply and price they controlled, whose credit terms and advertising they controlled, and so forth. This did not conform with our notion of fair competition.

The Petroleum Marketing Practices Act of 1978 was intended to end arbitrary actions by refiners against their dealers. However, the PMPA deals almost solely with the problem of lease termination. It does not address other forms of Pressure that can be exerted. In fairness to the authors of the Dealer Day in Court law, I should say that it would be a truly Herculean task to list all of the possible forms of pressure that can be brought to bear on the dealers, and it would be even tougher to write a law that would prohibit them one by one.

For an illustration of how pervasive is the effect of refiner controls over dealers, we have only to look at the situation with gasohol marketing. We have heard reports from many who say they would like to sell gasohol—indeed, who say their customers want to buy gasohol—but whose refiner/suppliers are preventing them from marketing this product. Not only does this violate the notion of the dealers being independent businessmen, it also stands in the way of implementing our national policy of promoting the use of alcohol fuels.

A new problem is only now emerging. That is the arbitrary price differential between branded and unbranded gasoline. Product sold to dealers and jobbers who sell under the tradename of a refiner costs more than product that is intended for sale without the brand name on it. The rationale is that the added cost reflects the expenses of advertising, national credit card systems, promotion of the brand, and so forth.

In recent years, though, there has been increasingly less brand-name advertising, and what advertising there is tends to be more institutional or advocacy in nature, rather than product-oriented. Most refiners have changed their credit policies so that it now costs dealers more to handle the company credit cards, and several companies have actually stopped issuing new credit cards. Promotional activities today exist chiefly in our memories.

Despite these changes, branded dealers and jobbers remain stuck with higher-priced product and little to show for it in the way of added benefits. Increasingly, we see their refiner/suppliers going into the same market and underselling them with unbranded product.

Finally, it should be noted that independent marketers look at federal regulations with decidedly mixed feelings. On the one hand, they are subjected to price controls that frequently bear little relationship to reality, and they are unable to increase the gallonage at their stations the way refiners can. On the other hand, many marketers acknowledge that without federal regulation they might be subject even more to the whims of the refiners.

In many ways, the federal regulatory structure today acts as a buffer between the handful of big oil companies and the many smaller firms who market their product. When federal controls are withdrawn, it is possible that changes in the gasoline marketplace may be even more dramatic than what we have witnessed under controls.

We are now looking at the scheduled expiration of federal controls regulating gasoline marketing in just 16 months. Therefore, this is an appropriate time to be considering whether structural changes are needed in the gasoline marketplace. Currently, there is a reliance upon federal regulations to give smaller companies some measure of protection against predatory practices by major integrated oil companies and big refiners. Instead, I believe, we should be looking for ways to make the independent business operator better able to compete on a fair and equal basis in the marktplace. Where there is true, meaningful competition, there should be little need for government intervention.

With this in mind, the Small Business Motor Fuel Marketer Preservation Act, H.R. 6722, was drafted. It is premised upon an environment of decontrol and it is intended to give small and independent businesses an opportunity to compete on equal terms in the gasoline marketplace.

On March 6 I introduced this bill, joined by a bipartisan majority of the members of the Subcommittee on Antitrust and by the chairman of the full Small Business Committee. We now have a total of 60 cosponsors. At the conclusion of my remarks, I will submit a list of the cosponsors of this legislation.

Also, I would like to submit for the record a detailed summary of the Small Business Motor Fuel Marketer Presevation Act. Right now, I will briefly review the key provision of the legislation and discuss the purpose of each item.

### DIVORCEMENT; REFINER SALES RATIOS

The major, integrated oil companies would be prohibited from directly operating motor fuel service stations. They may, however, continue to own stations and lease them out to independent dealers to operate. There are approximately 225,000 gasoline retail outlets in the United States at this time. Barring the integrated majors from direct retailing would affect 8,000 of approximately 14,400 refiner operated service stations. The remainder are scattered among the 150 or so small and independent refiners in the United States. Refiners who are not integrated majors—those who produce less than 30 percent of their own crude oil needs or who have refinery capacity of less than 175,000 barrels per day—would be subject to what we term a "refiner sales ratio". Briefly this means that small and independent refiners can continue direct retail sales, provided that the proportion of such sales to their total volume does not exceed the ratio they had in 1978. If they increase the total volume of motor fuel they put in the marketplace, they are restricted to selling that amount in proportion to their sales ratio in 1978, not to exceed 50 percent, through their own direct operated outlets.

Both of these provisions, divorcement for the majors and sales ratios for the other refiners, are designed to reverse the trend we have seen of the refiners selling increasingly large portions of their gasoline through their own stations, yet still encourage the production of additional quantities of gasoline.

### DEALERS RIGHTS; SBA LOANS

The legislation does not compel that sale of a service station by anyone. However, it does specify that if a refiner elects to sell any property that is being leased to a dealer, then the dealer must be given the right of first refusal to purchase that station. An independent appraisal is called for in cases when the dealer and refiner are not able to reach agreement on the price of the property. The legislation makes SBA loan guarantees available to dealers who are seeking to purchase the station they currently lease.

These provisions are intended to assure dealers the right to remain in business even if the refiners/landlord decides it no longer wants to be in a given location. This is specifically important where we see some oil companies seeking to withdraw from regions of the country.

### OPEN SUPPLY

Under this legislation, it would be unlawful for anyone to interfere with the right of a dealer to purchase, store or sell motor fuel obtained from anyone else. There is a proviso that dealers who operate brand name service stations must provide point-of-sale notice to customers if the product being sold was not obtained from the brand name suppliers.

The problem we have today is that dealers in the vast majority of the service stations that have refining companies' names on them currently are prevented from marketing motor fuel supplied by anyone other than the brand name supplier. In effect, these stations are a captive market for their suppliers. Later, several of the major companies have effectively denied their dealers the right to sell gasohol, because this would violate the current monopoly supply arrangements.

The current situation leaves the dealers and the public completely at the mercy of the major oil companies. Today most dealers cannot go out and shop for cheaper gasoline to sell to their customers. Nor can most dealers now go the the open market and make up for short supplies if their supplies are at low allocation fractions or are otherwise unable to meet the service station operator's supply needs.

The effect of this provision would be to open up the wholesale price competition approximately 150,000 service stations that currently are locked into sole source supply arrangements. We believe this would create wholesale price competition where none now exists and it would facilitate the movement of motor fuel products to retail customers. It would make the dealers in those stations truly independent businessmen.

### RACK PRICING

Using the model of the Robinson-Patman Act, the legislation establishes the principle that persons purchasing similar quantities of motor fuel at the same time and place should all be charged the same price. Surcharges can be based on actual costs of branding and other services. Currently the pricing structure is based primarily upon the classification of the customers, rather than any actual differences in costs incurred by the supplier.

This provision is necessary to assure the independent dealer a fair and equal chance to compete in the marketplace. Otherwise, he will continue to be the victim of wholesale price discrimination, and his customers will have to pay higher prices for gasoline.

The proposals that are embodied in H.R. 6722 address several different, but related issues. Each item works individually and in concert with the others. In this series of hearings on the legislation, I hope that we will have a discussion not only on the bill as a whole, but also on the various concepts found within it.

The legislation I have outlined this morning is rather modest when compared to some of the proposals we have heard. However, I believe this legislation will achieve, with minimum disruption in the petroleum industry and at no cost to the public, the changes that are necessary to assure the survival and the vitality of small, independent marketers of motor fuel.

Mr. SCHEUER. It has been a privilege working with you.

Mr. BEDELL. Our first witness is Comptroller Goldstein, the comptroller of the State of Maryland.

Mr. Goldstein's department collects all gasoline taxes in the State. In addition, Mr. Goldstein sits in the monthly meeting of the Governor and attorney general and other high level State officials to review State programs and challenges.

Mr. Goldstein has served in statewide office for many years and is well known in the Free State for his personal campaigning. He makes it a point to explore problems with the citizens of his State, including those who operate gasoline stations, and we are grateful to Mr. Goldstein for coming here today from Annapolis to advise us of Maryland's experience with a law similar to H.R. 6722.

We are pleased to have you with us, Mr. Goldstein. We ask that you introduce those people who are with you today as well.

## TESTIMONY OF HON. LOUIS L. GOLDSTEIN, COMPTROLLER, STATE OF MARYLAND, ACCOMPANIED BY GERALD LANGBAUM, ASSISTANT ATTORNEY GENERAL; AND ARTHUR PRICE, MOTOR FUEL INSPECTION ADMINISTRATION

Mr. Goldstein. Thank you Chairman Bedell. And good morning to the distinguished members of the committee and my good friend and former coworker, Edmond Rovner.

To my right is Jerry Langbaum, assistant attorney general, attached to the comptroller's office. To my left is Arthur Price who has charge of motor fuel inspection. And to the rear of us we have Robert Serviss, the chief of the gasoline tax division; Mr. Howard FitzGerald, his assistant, and Mr. Marvin Bond, assistant comptroller.

Mr. Bedell. We would appreciate it if you would proceed with your testimony.

Mr. Goldstein. I wish to thank you and the members of the committee for the opportunity to testify here this morning with reference to H.R. 6722.

In Maryland, my office is responsible for collecting the motor fuel tax and regulating the retail gasoline business. Maryland became the first State to pass divorcement legislation during the 1974 session of the Maryland General Assembly. It would be appropriate to review the circumstances that led to the enactment of that legislation and some of our experiences with the law.

While the Arab oil embargo stands out in American minds as the great energy crisis, we in Maryland began to see unconscionable activity in the retail gasoline business in the spring of 1973.

Complaints of lease cancellations and discrepancies in the quotas of gasoline allocated to different kinds of retail service stations flowed into our office and the offices of other State officials.

In response, the Governor requested that our office undertake a survey to determine the extent and nature of these unusual situations. Our survey encompassed both the major oil companies doing business in Maryland and the retail service stations.

Gasoline shortages developed during the summer of 1973 which forecast the harsher conditions ahead. The conclusion of our study was that supplies of gasoline were being directed away from independent dealers and toward more profitable company operated stations. Based on our study, it appeared that company operated stations were virtually unaffected by the shortage that occurred during the summer of 1973. Independent dealers, however, were forced to curtail hours of operation and limit purchases.

The study also concluded that a clear trend toward establishment of more company operated stations, at the expense of independent dealers, was growing. A part of this trend seemed to be a lessening of full service stations and more abritrary control over such amenities as hours of operation and credit cards.

On September 13, 1973, I met with hundreds of retail service stations dealers in Baltimore and explained to them the concept of the divorcement proposal.

The legislation was introduced into the House of Delegates and the Maryland State Senate during the 1974 session. Committees in each house held public hearings and I can tell you those hearings were very heated. All the large oil companies brought in the big lawyers from Houston, Tex., California, New York, all over the country, to testify against the legislation.

The house and the senate passed these bills by overwhelming majority. Testimony at that time indicated that approximately 10 percent of Maryland's nearly 4,000 service stations were company operated.

The Governor held a veto hearing to give all parties a chance to be heard. The bill was signed into law on May 31, 1974. Here a brief explanation of the relevant part of Maryland's law would be appropriate.

Maryland's divorcement law provides that no producer or refiner of petroleum products may operate a major brand, secondary brand, or unbranded service station in the State of Maryland with company personnel, a subsidiary company, commissioned agent, or under a contract with any person, firm, or corporation managing a service station on a fee arrangement with a refiner or producer.

There is no grandfather clause in Maryland's law and there is no requirement for the companies to sell the service station properties. The law pertains only to the operation of the service station. Further, the law as it was originally passed provides a 1-year grace period for companies to find dealers.

The 1979 session of the Maryland General Assembly enacted certain amendments to the law which I will discuss in a moment. Several suits challenging the constitutionality of Maryland's law were filed in Circuit Court for Anne Arundel County, Md., within weeks of the bill being signed into law. That court issued a decision declaring the law unconstitutional on January 27, 1976. The Maryland Court of Appeals, our State's highest court, overturned the lower court's decision on February 18, 1977. The opinion was written by Judge Elridge, a wonderful opinion.

The U.S. Supreme Court accepted jurisdiction and heard arguments on February 28, 1978. The Supreme Court upheld the constitutionality of the Maryland divorcement law in a landmark decision handed down on June 14, 1978.

In its decision, the U.S. Supreme Court struck down the arguments of the oil companies that the Maryland statute was unconstitutional in light of the Sherman Act and the Robinson-Patman Act and that it violated the commerce and due process clauses of the U.S. Constitution. The court upheld the power of the Maryland General Assembly to enact legislation of an economic regulatory nature.

Under the mandate of the U.S. Supreme Court, the State of Maryland prepared for implementation of the divorcement law. Our office required oil companies to report the locations of all company operated stations on August 1, 1978. Operation of those stations was to be turned over to independent dealers by July 13, 1979. There were approximately 250 company operated stations in Maryland as of August 1, 1978.

Right at this point, one of the top people who opposed the law was one of the top officials working for Exxon, a white-collar job. He took over one of the stations. He is now operating a gasoline station making twice as much as he was as a white-collar man, and he is the happiest man Exxon ever had. He told me the other day I did him a favor in passing the law.

When the law finally went into effect on July 13, 1979 there were 76 stations which remained company operated under extensions granted by our office due to litigation. There remain several cases relating to divorcement in various courts in Maryland. These fall generally into two categories—those challenging the definition of the term subsidiary company contained in regulations issued by our office pursuant to the divorcement law, and a suit challenging the constitutionality of the law in light of two amendments added by the 1979 session of the Maryland General Assembly. These two amendments have the effect of exempting some mass merchandisers and agricultural cooperatives from the provisions of the law.

The effects of Maryland's divorcement law, we believe, have been beneficial to the consumer and to the retail service station dealer. Arguments have been advanced that divorcement causes increased prices. We believe that increased prices at the retail service station pump are clearly the result of the tremendous and continuing increases in the price of crude oil. Such price increases are obviously beyond the control of any State law. Prices and allocations of gasoline are controlled by the U.S. Department of Energy at the present time. Therefore, the relationship between the divorcement law and these factors in the marketplace hardly seems to be a clear case of cause and effect.

One thing that is clear is the increase in competition and small businesses which divorcement has brought. It is our contention that independent service station operators provide better service and are more responsive to the needs of the community.

There are two specific observations which I would like to make regarding H.R. 6722. First is that the enforcement is left to the Federal Trade Commission.

In testimony before other committees of Congress and Federal agencies, it has been my position that enforcement in many of these matters should be shared with State governments. My counterparts in the other 49 States and Washington, D.C., and I have records and contacts that can prove invaluable in the enforcing of these kinds of laws.

Let me give you a specific example. Maryland has had an octane posting law since 1970. We act as the enforcement agent for the Federal Trade Commission in its octane posting and for the Environmental Protection Agency in its lead content regulations.

I understand that now the Federal Trade Commission is seeking other States to provide enforcement in the areas of octane posting because of a lack of manpower. I would recommend that enforcement of the provisions of H.R. 6722 be placed with the U.S. Department of Energy, with the understanding that the respective States would be invited to participate.

I will give an example. Recently our office cooperated with the U.S. Department of Energy in the most comprehensive retail service station price survey ever undertaken. The joint cooperation was beneficial to the taxpaying consumer, the Federal and State governments.

The second observation I would make concerns the fact that H.R. 6722 appears to be written for a regulated industry. If gasoline is deregulated, what protection can be offered to the dealers to insure that supplies of products will be forthcoming? If gasoline is deregulated, the obligatory relationship between suppliers and retailers would vanish. Without guarantees of supply, a dealer could conceivably find himself or herself with substantial mortgage payments on a service station property and no supplier of fuel.

When Maryland's divorcement law was passed, there were predictions of great upheavals in the marketplace and a disruption of the distribution system. Since its enactment, we have seen no great upheaval, and the Arab oil shieks have caused far more disruption than the divorcement law.

I travel over our State week after week and the gasoline stations are practically open all day and night because they can't sell their product allotted to them. They are again starting to give you service. Six months ago, they closed up at 4 and you would go up there at 5 minutes to 4 and they wouldn't sell you gas in our State. They got so damn independent, especially ones any way connected with the big oil companies.

I want to thank you for the opportunity to testify here today and I certainly agree with your legislation and congratulate you and the cosponsors for sponsoring such legislation.

[Mr. Goldstein's prepared statement follows:]

### PREPARED STATEMENT OF LOUIS L. GOLDSTEIN, MARYLAND STATE COMPTROLLER

Chairman Bedell, Chairman Scheuer, members of the Committees, I want to thank you for the opportunity to testify here today on H.R. 6722. In Maryland, my office is responsible for collecting the motor fuel tax and regulating the retail gasoline business. Maryland became the first state to pass divorcement legislation during the 1974 session of the General Assembly. It would be appropriate to review the circumstances that led to the enactment of that legislation and some of our experiences with the law.

While the Arab Oil Embargo stands out in American minds as the great "energy crisis," we in Maryland began to see unconscionable activity in the retail gasoline business in the spring of 1973.

Complaints of lease cancellations and discrepances in the quotas of gasoline allocated to different kinds of retail service stations flowed into our office and the offices of other state officials.

In response, the Governor requested that our office undertake a survey to determine the extent and nature of these unusual situations. Our survey encompassed both the major oil companies doing business in Maryland and the retail service stations.

Gasoline shortages developed during the summer of 1973 which forecast the harsher conditions ahead. The conclusion of our study was that supplies of gasoline were being directed away from independent dealers and toward more profitable company operated stations. Based on our study, it appeared that company operated stations were virtually unaffected by the shortage that occurred during the summer of 1973. Independent dealers, however, were forced to curtail hours of operation and limit purchases.

The study also concluded that a clear trend toward establishment of more company operated stations, at the expense of independent dealers, was growing. A part of this trend seemed to be a lessening of full service stations and more arbitrary control over such amenities as hours of operation and credit cards.

On September 13, 1973, I met with hundreds of retail service station dealers in Baltimore and explained to them the concept of the divorcement proposal. The legislation was introduced into the House of Delegates and the Maryland State Senate during the 1974 session. Committees in each house held public hearings and passed the bills by overwhelming majorities. Testimony at that time indicated that approximately ten percent of Maryland's nearly 4,000 service stations were company operated.

The Governor held a veto hearing to give all parties a chance to be heard. The Bill was signed into law on May 31, 1974. Here a brief explanation of the relevant part of Maryland's law would be appropriate. Maryland's divorcement law provides that no producer or refiner of petroleum products may operate a major brand, secondary brand or unbranded service station in the State of Maryland with company personnel, a subsidiary company, commissioned agent or under a contract with any person, firm or corporation managing a service station on a fee arrangement with the refiner or producer.

There is no "grandfather clause" in Maryland's law and there is no requirement for the companies to sell the service station property. The law pertains only to operation of the service station. Further, the law as it was originally passed provides a one-year grace period for companies to find dealers.

The 1979 session of the Maryland General Assembly enacted certain amendments to the law which I will discuss in a moment. Several suits challenging the constitutionally of Maryland's law were filed in Circuit Court for Anne Arundel County, Maryland within weeks of the Bill being signed into law. That court issued a decision declaring the law unconstitutional on January 27, 1976. The Maryland Court of Appeals, our State's highest court, overturned the lower court's decision on February 18, 1977.

The United States Supreme Court accepted jurisdiction and heard arguments on February 28, 1978. The Supreme Court upheld the constitutionality of the Maryland divorcement law in a landmark decision handed down June 14, 1978.

In its decision, the United States Supreme Court struck down the arguments of the oil companies that the Maryland Statute was unconstitutional in light of the Sherman Act and the Robinson-Patman Act, and that it violated the Commerce and Due Process clauses of the United States Constitution. The court upheld the power of the Maryland General Assembly to enact legislation of an economic regulatory nature.

Under the Mandate of the United States Supreme Court, the State of Maryland prepared for implementation of the divorcement law. Our office required oil companies to report the locations of all company operated stations on August 1, 1978. Operation of its stations was to be turned over to independent dealers by July 13, 1979. There were approximately 250 company operated stations in Maryland as of August 1, 1978.

When the law finally went into effect on July 13, 1979 there were 76 stations which remained company operated under extensions granted by our office due to litigation. There remain several cases relating to divorcement in various courts in Maryland. These fall generally into two categories—those challenging the definitions of the term "subsidiary company" contained in regulations issued by our office pursuant to the divorcement law, and a suit challenging the constitutionality of the law in light of two amendments added by the 1979 session of the Maryland General Assembly. These two amendments have the effect of exempting some mass merchandisers and agricultural cooperatives from the provisions of the law.

The effects of Maryland's divorcement law, we believe, have been beneficial to the consumer and to the retail service station dealer. Arguments have been advanced that divorcement causes increased prices. We believe that increased prices at the retail service station pump are clearly the result of the tremendous and continuing increases in the price of crude oil. Such price increases are obviously beyond the control of any state law. Prices and allocations of gasoline are controlled by the U.S. Department of Energy at the present time. Therefore, the relationship between the divorcement law and these factors in the market place hardly seems to be a clear case of cause and effect.

One thing that is clear is the increase in competition and small businesses which divorcement has brought. It is our contention that independent service station operators provide better service and are more responsive to the needs of the community.

There are two specific observations which I would make regarding H.R. 6722. First is that the enforcement is left to the Federal Trade Commission. In testimony before other committees of Congress and Federal agencies, it has been my position that enforcement in many of these matters should be shared with state governments. My counterparts and I have records and contacts that can prove invaluable in enforcing these kinds of laws. Let me give you a specific example. Maryland has had a octane posting law since 1970. We act as the enforcement agent for the Federal Trade Commission in its octane posting and for the Environmental Protection Agency in its lead content regulations. I understand that now the Federal Trade Commission is seeking other states to provide enforcement in the areas of octane posting because of a lack of manpower. I would recommend that enforcement of the provisions of H.R. 6722 be placed with the U.S. Department of Energy, with the understanding that the respective states would be invited to participate.

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When Maryland's divorcement law was passed, there were predictions of great upheavals in the marketplace and a disruption of the distribution system. Since its enactment, we have seen no great upheaval, and the Arab oil shieks have caused far more disruption than the divorcement law.

Thank you once again for the opportunity to testify here today, and we will be happy to answer any questions.

Mr. BEDELL. Thank you very much, Mr. Goldstein.

Mr. Hall?

Mr. HALL. Thank you, Mr. Chairman.

Mr. Goldstein, the law was passed in the Maryland Legislature in 1974?

Mr. GOLDSTEIN. Yes, sir.

Mr. HALL. Then because of litigation it went to court and the Supreme Court finally ruled on it and it was finally in operation, this particular law, in 1979, as I read your testimony?

Mr. GOLDSTEIN. That is right, sir.

Mr. HALL. So you really have only had about 10 months to work under this particular law. And your final statement was that they predicted upheaval within the marketplace, and of course, you have not seen that; is that true?

Mr. GOLDSTEIN. That is exactly right. We haven't had any upheaval at all.

Mr. HALL. During that time, do you have any statistics to show how many independent gasoline dealers have gone out of business since July?

Mr. PRICE. Yes. During that period in time, while we don't have a hard number, we don't see any activity abnormal to that percentage of turnover that occurred in the past.

If anything, strictly by the pulse of those registrations that come across our desks, it perhaps is less of a turnover today than was years ago.

Mr. HALL. You think as a result, because of the equality of your law and our proposed bill, that competition in the marketplace among all the dealers will tend to, subject, of course, to OPEC increases, keep the price down because of the influx of more competition in the marketplace. That is what you are stating; is that true?

Mr. GOLDSTEIN. Another thing is service. When you drive up to a gasoline station and the operator says good morning and wipes off your windshield and you have a clean bathroom and takes care of your needs, that is a service station you are going to use.

I can remember 6 months ago the bathrooms were filthy dirty. They didn't care whether you bought gasoline or not. Now you see a turnaround because there is plenty of supply.

In our State we are off 10 percent compared to last year in our gasoline tax revenue. Nationwide it runs pretty close to 10 percent. So people are buying less gas, buying smaller cars. My wife used to go to the store three times, now once.

**Mr. HALL.** As a result of all those stations that are now being operated independently, are there any facts relative to the leasing arrangement? I am mostly interested in the leasing arrangement. Have the leases had a tendency to go up as far as rental fee on the stations?

**Mr. PRICE.** We can only address that question partially, Mr. Hall, in the sense that when those stations that were producer-refiner-company operated, those that were leased then to dealers, we took a look at the lease and the lease terms of many of them simply to determine whether or not they were in compliance with all aspects of that law.

Personally, I spent 15 years with a major oil company prior to joining the State 10 years ago. I could see nothing different in those leases that was abnormal or different from the normal lease that has always prevailed there and we read all of those rental increases, et cetera, in the area. We have not experienced any of that affecting stations that had been company operated prior.

**Mr. HALL.** Thank you, Mr. Chairman.

**Mr. BEDELL.** Thank you, Mr. Hall.

Mr. Quayle?

**Mr. QUAYLE.** I apologize for being late, Mr. Chairman. I have just one question and perhaps you have gone over this.

You have divorcement in Maryland, right?

**Mr. GOLDSTEIN.** Yes, sir.

**Mr. QUAYLE.** Does this apply to all, the majors and independents as well, or is there some dividing line?

**Mr. GOLDSTEIN.** It applies to all of them. There were two exceptions in the bill. Mobil bought out Montgomery Ward and went in the general merchandise business. Montgomery Ward had a few stations and we had the Southern States Agricultural Cooperatives. Those cases are in court. Maybe legal counsel can give you details as to where they are.

We had four types of gasoline stations in Maryland: Company owned and operated, company owned and leased, independently owned and selling a major brand, and independent. Those are the four types of gasoline stations in our State that we surveyed and tried to find out what kind of business was going on.

The company owned and operated got the gas they wanted. Company owned and leased were next on the totem pole. Independently owned and selling major brand were number three. The independent guy had a dry cow that would give no milk.

**Mr. QUAYLE.** Let me clarify a point. An independent refinery or a jobber, are they precluded from owning a gasoline station in Maryland?

**Mr. PRICE.** Yes; we make no distinction. Our law says if they are a producer—and by definition producer is virtually the same as in this proposed bill—a producer or refiner, there is no distinction, they cannot company operate. There is no line of small independent versus large. If he is a producer or refiner, he cannot company operate a station.

Mr. **Quayle**. Of any degree?

Mr. **Price**. That is correct.

Mr. **Quayle**. If my understanding is correct of the bill before the committee, that is not in the bill. Would you tell us why you did not make a distinction, and if there were any arguments as you developed this bill to have a line of demarcation where certain people would be included and certain people would not be included?

Mr. **Price**. No; I think our bill addressed that caliber of producer-refiner that was doing business in our State of Maryland. We don't have that degree or any degree, really, of that which your bill would entitle smaller independent producer-refiners.

Mr. **Quayle**. Ours does not?

Mr. **Price**. That is correct, ours does not.

Mr. **Quayle**. That is correct. I was wondering why you reached that conclusion rather than perhaps having a certain entry level?

Mr. **Price**. I cannot address that because that was spawned by our general assembly and was certainly in the minds of those people who drew that bill.

Mr. **Quayle**. Thank you, Mr. Chairman.

Mr. **Bedell**. Thank you, Mr. Quayle.

Mr. Goldstein, you say: "One thing that is clear is the increase in competition and small businesses which divorcement has brought. It is our contention that independent service station operators provide better service and are more responsive to the needs of the community." And you have elaborated upon that somewhat.

We have had some testimony from some people who have been before us who claimed that the dealers in Maryland were taking advantage of the absence of refiner competition to raise prices. Do you have any indication at all as to whether people are having to pay higher prices in Maryland for their gasoline as a result of your divorcement legislation or not?

You said the service is better. My question is, do you have any indication to know whether the price is higher or not?

Mr. **Goldstein**. I don't think so. Take recently the Department of Energy now says a gasoline station can make 16 and a fraction cents per gallon, after you take in the wholesale price, plus the Federal and State tax.

We had a survey made this past winter, some service stations were overcharging and we turned the information over to the Department of Energy and our attorney general office. And the Department of Energy made another study.

You are always going to find a few culprits in this country. They are going to try to violate some law. We think things are on even ground now.

Mr. **Bedell**. As far as you can tell, your law has not caused there to be a general increase in price?

Mr. **Goldstein**. No, sir.

Mr. **Bedell**. At the retail level?

Mr. **Goldstein**. No, sir.

Mr. **Bedell.** I assume you have the gas-and-go service stations in Maryland the same as we do in other areas?

Mr. **Goldstein.** Yes, sir.

Mr. **Bedell.** Have you seen any decline in the number of those stations, do you know?

Mr. **Goldstein.** Absolutely. You know, after the price was charged by the oil company, and due to the OPEC raising the price, and raising it again, they can't sell the gasoline any cheaper than anybody else. They don't give service. They don't have a bathroom. You can go to hell. They won't check your tires.

I don't understand the way they operate a business, the public be damned. That is their attitude in our State. I would go by 50 stations and go down the road and carry a can of gasoline before I would go to a stop-and-go place.

Mr. **Bedell.** Your legislation is similar to this legislation in that it would mandate divorcement not divestiture, as I understand it. It did permit the oil companies to continue to own the stations, they simply could not operate them?

Mr. **Goldstein.** That is exactly right, sir.

Mr. **Bedell.** You mentioned that you had made some exemptions for two mass merchandisers and agricultural cooperatives. What was the reasoning on the agricultural cooperatives, and would you tell us what that was about?

Mr. **Langbaum.** The 1979 amendments were enacted over the opposition of the comptroller's office, getting back to the question raised by Mr. Quayle. The law as enacted and as desired by the comptroller's office offered no exemptions. Anyone who was a producer or refiner was precluded from operating a retail service station.

But one agricultural cooperative which happened to own a one-third interest in a refinery and which therefore was deemed to be a refiner by the regulations that we promulgated pled its case to the general assembly last year, and pled it successfully.

And Montgomery Ward & Co., a mass retailer, by our regulations was also deemed to be a producer-refiner because its stock was owned by the parent corporation of Mobile Oil Corp.

They pled their case to the general assembly and got an exemption for any mass merchandiser who has 2 percent or less of the total receipts from the sales of gasoline.

Because of those two exemptions, one of the major oil companies, Cities Service, came back into court with us last fall claiming that the law now discriminated against it. They fashioned themselves to be in the nature of a mass merchandiser because they offered some sodas and cookies along with their gasoline.

That case was argued at Maryland Court of Appeals last month. The lower court rejected the equal protection challenge but did find one problem with these laws that they were special laws under a provision of the State constitution.

We will have a decision from our court of appeals probably before June is up, and whether or not—I don't see a Federal question here that is likely to go any further.

Mr. **Bedell.** Thank you.

Are there any further questions?

Ms. **Nord**. Thank you, Mr. Chairman. The minority members of the Commerce Committee were not able to be here this morning and asked that I represent them.

I just wanted to get the numbers straight with respect to the history of this thing. How many company owned and operated stations were there in Maryland that were subject to this divorcement?

Mr. **Price**. Just a little under 300.

Ms. **Nord**. All but 55 of those——

Mr. **Price**. Remained due to challenges in court.

Ms. **Nord**. So they have been divorced?

Mr. **Price**. That is correct.

Ms. **Nord**. Could you tell me how many of those were then purchased by the dealer that was operating the station, how many purchased by chains, and how many purchased by jobbers?

Mr. **Price**. No; we have no head counts. There were several employees who were either managers or salaried employees of oil companies who leased certain stations, but we have no statistics on the percentage.

Ms. **Nord**. Do you have any general information, could you give me a sense as to how many jobbers took over the stations in Maryland?

Mr. **Price**. By our definition no jobbers or distributors, as I think we view that trade. It was strictly retail dealers who may have operated more than one, two, or three of them.

Ms. **Nord**. But not large chains of stations?

Mr. **Price**. That is correct.

Ms. **Nord**. Perhaps you would give me a brief education here. When divorcement takes place, what happens to the allocation for gasoline?

Mr. **Price**. It is my understanding that the allocation stays with the facilities, with the station.

Ms. **Nord**. So Maryland had no problem with any of those stations losing their allocation?

Mr. **Price**. That is correct.

Ms. **Nord**. Finally, it is my understanding that the original legislation when it was drafted included jobbers in the definition of those who would have to go through the divorcement. Why was that excluded in the ultimate legislation?

Mr. **Price**. I am not quite sure how to answer that other than you are correct, jobbers were included in the original draft.

Ms. **Nord**. Was that the comptroller's office recommendation?

Mr. **Price**. Not to my knowledge.

Ms. **Nord**. The comptroller's office didn't draft the legislation?

Mr. **Goldstein**. We drafted it, but we felt in the committee hearings there was some opposition to that part of the bill. The legislation comes about by an art of compromise. You can offer the best bill and unless you do some compromising you don't get it passed. I have had 16 years of experience in the Maryland Legislature and I know how to compromise.

Ms. **Nord**. But it was your original recommendation?

Mr. **Goldstein**. Yes, ma'am.

Ms. **Nord**. Thank you, Mr. Chairman.

Mr. **Rovner**. Mr. Goldstein, there is a statement in the report by the Department of Energy that the traditional three-bay gasoline station can't be a large-volume seller of gasoline. We don't know what the breaking point is on high volume. Of the gasoline stations in Maryland, are there many of them that sell more than 50,000 gallons a month in the traditional three-bay stations?

Mr. **Price**. Absolutely. I think 100,000 gallons a month is very common.

Mr. **Rovner**. For the traditional three-bay stations?

Mr. **Price**. There are three-bay stations, yes. Typical is the Exxon car care centers. Certain of those, of course, have more than three bays and certainly do more than 100,000 gallons a month.

Mr. **Rovner**. Is gasohol being sold in Maryland now?

Mr. **Price**. Yes, sir, at some 79 locations, to be supplied by some 21 different suppliers.

Mr. **Rovner**. Without problem?

Mr. **Price**. Without a problem.

Mr. **Bedell**. We thank you very much, Mr. Goldstein, for being here and we commend you for the work you have done in breaking the ground in this area. We certainly appreciate your help. We may be contacting you for further information.

Mr. **Goldstein**. Any information we can supply, we will be happy to come to Washington and furnish the same.

Mr. **Bedell**. Thank you. We appreciate your being here.

Our next witness is Bill Lane, Director of the Office of Competition of the Department of Energy.

We would ask you to introduce the people with you.

## TESTIMONY OF WILLIAM LANE, DIRECTOR, OFFICE OF COMPETITION, DEPARTMENT OF ENERGY, ACCOMPANIED BY ROBERT FENILI AND JAMES B. DELANEY, STAFF

Mr. **Lane**. On my right is Bob Fenili and on my left is Jim Delaney, both members of my staff.

Mr. Chairman and members of the subcommittee, I am here today to express the views of the Department of Energy on H.R. 6722, a bill to amend the Small Business Act for various purposes.

Mr. Bedell, skipping over the description of the bill, I would like to say it requires no immediate action on the part of DOE. It could, however, affect the price and allocation regulations to the extent they are still in effect when the bill is enacted.

The Department supports the objective of maintaining a competitive gasoline marketing industry. Before this legislation is enacted, however, a thorough analysis of its impact should be completed. A study mandated by title III of the Petroleum Marketing Practices Act (15 U.S.C. 2841) is underway within the Department and addresses many of the same issues raised in this bill.

As you are aware, the Department published part I of the title III study on April 30, 1980. It concluded that since 1972 the dealer class of trade has lost market share to both refiners and other independent marketers; that is to say, branded jobbers and unbranded independents. The study also concluded that this loss in market share was probably more attributable to the relative disadvantage of dealers under DOE's current regulatory scheme than to predatory pricing practices by integrated refiners. Part II of this study will further examine the pricing practices and functional profitability of integrated refiners.

Part II will also present the final recommendations of the Department of Energy on the divorcement/divestiture question. Since the purpose of Congress in requiring this study was to provide analysis to detemine whether further measures to deal with subsidization of motor fuel marketing were necessary, we believe that proposals for additional legislation in this area should receive the benefit of the results of the study. Accordingly, the Department of Energy does not support enactment of H.R. 6722 at this time.

As we understand the bill, the basic problem which it seeks to remedy is the continuing decline in the numbers of independent dealers. We are concerned, however, that the bill may not be directed to the real cause of this problem. It may be that this decline is attributable to changes in the style of gasoline marketing rather than to predatory practices by integrated firms.

The results of part II of the title III study will shed light on this question, and enable Congress to focus any additional legislation that may be deemed necessary on the root cause of the problem.

As noted above, we will be able to comment further on the specifics of this bill or other divorcement legislation after completion of the title III study. We do, however, have some concerns regarding this bill that we would like to raise at this time.

It seems unlikely that a divorcement provision that focuses solely on the company store operations of major refiners will substantially halt the decline of dealer-operated outlets. Between 1972 and 1978 there was approximately a 3.5-billion-gallon increase in the amount of gasoline sold in company stores by those refiners which will be excluded from direct retailing by this bill.

In comparison to this increase, nonmajor refiners have increased their company store operations by 3.4 billion gallons, while branded and unbranded jobbers have increased their sales by 18.6 billion gallons. This last number, Mr. Chairman, is slightly more wobbly than others, but I think it is fairly close to accurate.

Thus, the divorcement provision of this bill only addresses directly a fraction of the increased gallonage supplied by refiners to their nondealer customers.

The rack pricing provision calls for uniform pricing by a refiner at the rack for all customers. This provision could be beneficial to those retail dealers who can arrange to perform the transportation function themselves.

However, the Department is not aware of any convincing evidence that equitable price terms would be unavailable to such dealers in any event, in the absence of price controls.

The prohibition of price differences which is contained in this provision might result in reduced price competition among refiners, and thereby increase the cost of gasoline to consumers. Consideration should also be given to the effect of this provision on jobbers who have traditionally performed the wholesale distribution function.

That concludes my prepared remarks and I would be happy to answer any questions.

Mr. BEDELL. Thank you very much.

Mr. Hall?

**Mr. Hall.** Mr. Chairman, Mr. Lane, I have been looking at a summary of your study. You conclude that there is no massive movement toward company store operations and you seem to lump the whole country together.

**Mr. Lane.** I don't think——

**Mr. Hall.** I don't see any regional kind of study, especially in States like Ohio.

**Mr. Lane.** That is one of the things we are going to do in part II, Mr. Hall, and that is one of the reasons we think enactment of any legislation would be well advised to wait for the results of that, because in part II we intend to do a State-by-State analysis of the trends in market share.

**Mr. Hall.** When is that going to happen?

**Mr. Lane.** It would be this fall.

**Mr. Bedell.** Would the gentleman yield?

**Mr. Hall.** I would be glad to.

**Mr. Bedell.** When were you expected to complete your last study?

**Mr. Lane.** March 31.

**Mr. Bedell.** When were you originally expected to complete it?

**Mr. Lane.** When I took the job, I announced I would complete it on March 31.

**Mr. Bedell.** When are we mandated to complete the study?

**Mr. Lane.** The legislation required it by December 31 of last year.

**Mr. Bedell.** It seems to me we should have straight answers to our questions. It was expected by all the Congress it would be in December. When did you complete it?

**Mr. Lane.** It was not expected by the Congress——

**Mr. Bedell.** You were mandated to complete it.

**Mr. Lane.** We wrote letters to many Members of Congress back in December 1978, or earlier than that. We wrote letters to many Members of Congress, including yourself, and said we would be 3 months late with the study. That was 1½ years ago.

**Mr. Bedell.** So the study was how many months late actually, as it turned out?

**Mr. Lane.** We were another month beyond that. We submitted part I on April 30.

**Mr. Bedell.** My point is that when we expect studies to come through at some time, they may come through at that time or not. This study was 4 months late on part I.

When was part II legislated to be completed?

**Mr. Lane.** The study itself was legislated to be completed in December last year. The problems that we have had in conducting the study arise from a lack of data. We had to go out and create our own data forms and subpena documents, and we got the data on March 15, and the documents on March 18. That has been the major problem that we have had.

We now have the data and the documents and, therefore, the schedule that we are setting is under our control and not under the control of the companies or other firms who are responding to our request for data.

So the point is, when I say to you it will be this fall, I think I can say that with a great deal of confidence, because we are not dependent upon other forces for when we are going to get the necessary information.

Mr. **Bedell**. The point I want to make to Mr. Hall is that the Congress had every confidence that the whole study would be completed last December. The first part of the study was not completed until 4 months after the deadline, when the Congress could expect it, and the second part is now expected you tell me by this fall.

So I would hope we would realize the assurance of when any study is going to be completed is certainly far from certainty.

Mr. Hall, thank you for yielding.

Mr. **Hall**. That is OK, Mr. Chairman.

In December 1979 your Office of Competition prepared a report for the subcommittee and you talk about trends in company operated outlets, and eight refiners: Mobil, Marathon, Sohio, Citgo, Gulf, Hess, Clark, and Crown. You say that they were particularly aggressive, and they were identified as being particularly aggressive and moving to a marketing strategy emphasizing company direct operations.

Yet as I read your report, the preliminary of the first report, you stress that there is no lack of competition. Your study comes across to me that there is competition in the marketplace and there really isn't a problem, and you tend to lump the whole country together. There were hearings in Ohio and various parts of the country, but especially in Ohio, that showed that the major companies, especially Sohio and Marathon, are really moving very aggressively, according to the testimony we received, into the retail operation.

Mr. **Lane**. I think if you look at those eight companies, they are not precisely the same eight companies that are the most, as you say, aggressive movers into direct retail operations when you look at it on an annual basis, which is what we did in part I of the report.

But I think looking down either list, the list that was prepared on an annual basis or the list in the trends paper which was done on a January 1972 to January 1979 basis, it is hard pressed to say that these are the major companies which are moving in this direction.

On the list, I think, that you have there is Citgo, Amerada Hess, and Crown, and on the analysis list we have Vickers and Ashland instead of Amerada Hess and Crown. We also have Clark, which is not a major company. We do have Marathon, Gulf, Sohio, and Mobil on this list of moving toward company stores.

However, you could look at another list of companies which have had the least movement into company stores and you would find a number of major companies on that list. For example, Exxon, Texaco, and Chevron, are companies which have had a minimal amount of movement into company stores.

When we put together this list, our purpose was not to identify these individual companies as being in some way bad actors. Our purpose was to show that the movement into company stores was not a uniform movement across the industry, first of all, and that it was done by various different kinds of refiners. That it wasn't that the majors were moving into company stores, or necessarily that the independents were moving into company stores, but a number of different types of refiners were moving into company stores.

That was the purpose in putting together the list. It was not to identify these companies for some kind of further investigative action.

I will say, as I told the subcommittee on May 8, that in part II, we will look at the movement of the 20 companies that we have on this new list into company stores, and we will see if they are subsidizing those stores, or if they are not, and we will try to do that on a nationwide basis.

In doing that we will also, at the same time, look at the internal company planning documents from at least three of these companies to see what their intent was, was it to put other people out of business or maximize their profits.

We are going to look at that, but I think it is a mistake to say we have somehow identified these eight companies as being sort of our targets and then failed to followup on the targets.

Mr. **Hall**. Did you read the testimony from the hearings in Dayton, Ohio?

Mr. **Lane**. I read some of your testimony. I don't believe I read the testimony from Dayton, no, sir, but I read some of the testimony here in Washington and in Iowa.

Mr. **Hall**. Did you conclude in fact as a result of that testimony that there really is competition out there, and the fact that there is anywhere from 60,000 to 90,000 independent gasoline stations that have gone out of business, that it has just happened because these dealers are poor retailers?

Mr. **Lane**. We held eight hearings of our own as well as the subcommittees hearings. We held hearings all over the country, including one in Fort Wayne, at which there was a substantial amount of testimony regarding alleged downstream subsidization.

We looked at the behavior of refiners in Fort Wayne, and at least so far as we could tell—we presented the results in part I—we couldn't see there was a pattern of predatory subsidization in Fort Wayne, Ind.

So we didn't find that the data in essence that we collected in Fort Wayne, which is hard and fairly reliable data—there are a few glitchs in the data. Even in the data we presented, there are a few glitchs we hope to get rectified in part II. I want to stress that. But we didn't find that the data was supportive of the allegations that had been made in the testimony.

Mr. **Hall**. I don't know. It is hard to understand the testimony from various people from the Department of Energy who come before us—this is supposed to be the Office of Competition. You and I have talked about this privately a long time ago, and you are supposed to represent, as I understand it, you are supposed to be a spokesman for the independent dealers.

Mr. **Lane**. That is not——

Mr. **Hall**. Well, you are supposed to be a spokesman for competition. I see it as kind of the small businessmen in the country, people who are trying to survive, and yet everything I keep reading seems to—the DOE and your office seems to be echoing what we are hearing from the major companies. I just don't see any——

Mr. LANE. All I can say is we took our responsibility under the statute, as I said, on May 8. We looked at the data so far as we have it. We are going to have more in part II. But so far as we can get the data up to this time, the data does not support the allegation that there is a massive trend toward company stores. Moreover, at this point, based only on Fort Wayne, it does not support the idea that there is predatory subsidization.

Mr. HALL. You are looking at Fort Wayne only?

Mr. LANE. That is right. We were looking at five SMSA's across the country. In order to get part I up to Congress by April 30—as you heard, the chairman and a number of members are upset because we were delayed and we wanted to get some information up to Congress as soon as possible—instead of publishing a report which had all five SMSA's in it, we published it with one. We will have the other four in part II: Los Angeles, Houston, Atlanta, and Boston. We think those, together with Fort Wayne, represent a fair cross-section of the country.

We have been told that subsidization is a nationwide problem. As one recent example, the Florida service station dealers say we should have gone there to investigate the situation. If it had been up to me, I would have gone to Hawaii to investigate the situation. But we decided not to take that tactic. Instead of choosing Miami, and Honolulu, and New Orleans, we tried to get a cross-section. The allegations are that it is a national problem. In Ohio you have a particular problem related to the special entitlements advantages held by Sohio on the North Slope, and that is a special problem in Ohio.

Mr. HALL. That is a special problem, but it has just happened recently. All of these stations going out of business started in 1972, and I guess the point I am trying to get is that you are the Office of Competition. Therefore, you are supposed to be looking at facts and figures across the country.

I don't understand, and I can't understand why you can't read the testimony. I can't understand why you pick Fort Wayne, why it takes so long to get a study completed, where you get your information from, the fact that in many regional areas, according to the testimony we have had in this committee, that the majors are moving into the retail business. They are doing a heck of a job taking over most of the business.

Mr. LANE. Would you like me to answer those questions?

Mr. HALL. Sure.

Mr. LANE. Where we get our data is, we issued a subpena for internal planning documents and we devised three data-gathering forms to collect data on market share trends, on channels of distribution, and on cost and profitability at retail.

We also held a series of eight regional hearings in addition to the initial hearing in Washington. In the regional hearings, we made it clear that we wanted specific evidence. We made that very clear, both in the Federal Register notice and in my statements at the beginning of the hearings, and I made several speeches before marketer groups. I said we wanted specific evidence at those hearings of subsidization. We got, in addition to a lot of general allegations, some specific evidence.

I will say that I allowed everything to come into those hearings. I got a lot of criticism from the major oil companies that said, well, you shouldn't have allowed Joe Jones over here to testify about his antitrust suit against our company. But I said, OK, you can testify about it. I let everything in at those hearings. That was my intention. I didn't want to exclude anything.

After we got the specific allegations, we wrote letters to the major oil companies, or to the other people who were named as having done something bad, and we got responses. Those responses in some cases were fairly convincing. Then we wrote additional letters to the individuals who had made the initial allegations, and we enclosed the responses of the major oil companies and said, OK, what is your response to their response, and in some cases, very few, we got responses. In other cases, we didn't.

We found after sorting through that evidence, all published in appendix C of part I of the report—and you can read it for yourself, it is sitting right there—that there was not very much in the way of allegations that were presented at those hearings that were supportable in terms of specific evidence of subsidization.

I don't know whether you have followed the same course. I don't know whether you have written letters or requested responses from those companies which are named in the testimony. If you do, you would have to draw your own conclusions as to the weight of the testimony that was given. That was the only thing we could do. We went out to try to find out what was going on.

Mr. HALL. I have no questions right now.

Mr. BEDELL. Thank you, Mr. Hall.

Mr. Lane, it has been shown you are the Director of the Office of Competition of the Department of Energy.

Mr. LANE. That is correct.

Mr. BEDELL. To whom do you report?

Mr. LANE. At the moment to the Deputy Assistant Secretary for Oil and Gas Policy, Steve McGregor.

Mr. BEDELL. There are quite a few problems, I guess. I am not sure what you are trying to get at here at the bottom of page four of your testimony. You say: "Thus, the divorcement provision of this bill only addresses a fraction of the increased gallonage supplied by refiners to their nondealer customers."

Does your testimony indicate you think the bill should go further and should include jobbers as well?

Mr. LANE. It depends on the purpose of the bill.

Mr. BEDELL. The purpose of the bill is not what you claim the purpose of the bill is. I think that is pretty important, because you say apparently the basic problem it seems to remedy is decline in the number of independent dealers. I think that is our big trouble. I think there is a misunderstanding about what this subcommittee thinks and what you think the subcommittee thinks.

Mr. LANE. Perhaps you could enlighten me.

Mr. BEDELL. The purpose of this bill——

Mr. LANE. Every time I come up here, I hear of 80,000 dealers who have gone out of business in the last 2 years; and I assume that is a concern which is in the minds of the members of the subcommittee.

Mr. **Bedell**. The purpose of this bill is to do what we thought your department was supposed to be charged with and that is to maintain competition in an industry. That is what the purpose of this bill is.

The purpose of this bill is not to see that there are so many dealers or that sort of thing. The purpose of the bill is to insure fair competition, and your study, as I understand it, is whether or not there is subsidization. That is all you seem to worry about. And you say if there isn't subsidization, we have good, even competition, if I read you correctly. Is that what you are saying?

Mr. **Lane**. Our concern is with competition and not competitors. Competition is a process and not a status. It is not a situation where everybody who opens their own grocery store has a right to stay in business, nor is it even a situation where any particular class of people who open grocery stores have a right to stay in business.

Mr. **Bedell**. That is correct.

Mr. **Lane**. There is no right under the antitrust laws that there should be at least 500,000 mom and pop grocery stores in this country.

Mr. **Bedell**. Obviously, and I hope you understand that is not the intent of this legislation.

Mr. **Lane**. All right. That is the first point.

Mr. **Bedell**. What do you think competition is?

Mr. **Lane**. Competition is the process whereby, in a free market, a commodity is delivered to the consumer at the lowest possible price.

Mr. **Bedell**. That is it?

Mr. **Lane**. I think that is the essence.

Mr. **Bedell**. If that is your assessment of competition, that is where our whole problem is, and that is why I am terribly disappointed you are in this position.

My assessment of competition is a situation wherein people have free opportunity to compete equally in a competitive marketplace, and if your assessment and definition of competition is whatever it is that brings the lowest price to the individual, then we better find out exactly whether that is what your purpose is.

If the purpose of the Office of Competition is to do whatever you think may possibly bring the lowest price to the consumer, regardless of how it affects anything else, we better find out exactly what you are doing in your job.

Mr. **Lane**. In the long term——

Mr. **Bedell**. We didn't say the long term.

Mr. **Lane**. What I am saying is, in the long term, what will bring the lowest price to the consumer is a market where there is free entry and exit. In other words, where people can come into the marketplace and can leave the marketplace.

Mr. **Bedell**. No concern about whether there is equal opportunity for competition or not. You have never mentioned that once in anything you have said so far, that there needs to be free and equal opportunity.

Mr. **Lane**. Equal opportunity for competition, for example, in the steel industry would presumably mean every individual on the street can get a loan to build a steel mill. Is that what you are talking about?

Mr. **Bedell.** No.

Let me ask you a question. You have the Office of Competition. You and I are competing. I happen to own your facilities, determine the price of the rent you are going to pay, determine the terms of the rent you are going to pay, determine the terms of your lease. I furnish you with your product. I determine the price you will pay for your product under decontrol. I determine the quantity of that product you will get. I determine what sort of situation will exist with your credit cards. You and I are competing equally and fairly, I assume you would feel. Is that correct?

Mr. **Lane.** I wouldn't say we are competing equally, but that doesn't necessarily mean we are not competing fairly.

Mr. **Bedell.** Excuse me.

Mr. **Lane.** When I entered into this contract with you under which we are going to assume this relationship, presumably I was over 21 years old. I was an adult. I was capable of deciding that in my best interest I would like to enter into a contract with you that said that. Otherwise, I would have gone and done something else with my life; right?

Mr. **Bedell.** So what you are really saying is, as long as somebody is free and 21 the Government should have no concern how much one person steps on another person because they didn't have to get to where they could be stepped on if they didn't want to. We are to have no control over change, as we have seen with decontrol, and you are saying it isn't necessarily equal but that doesn't concern you in the Office of Competition whether it is equal or not.

It is terribly frustrating for some of us who would like to see the opportunity for small business to continue to have the opportunity to compete in our free enterprise system to have the Department of Energy determine that you are going to be in charge of the Office of Competition and you come before our committee and tell us that you don't really worry about whether things are equal or not.

Mr. **Lane.** Equal competition is a contradiction in terms. One reason that many people go into business is to get a bigger business, not so they can be one of 10,000 small businesses.

Mr. **Bedell.** Have you ever been in business?

Mr. **Lane.** I was in college, yes, sir.

Mr. **Bedell.** What did you do?

Mr. **Lane.** I was in the student agency that sold stationary, caps and gowns, and things like that.

Mr. **Bedell.** You had a business of your own where you sold rings and gowns?

Mr. **Lane.** It is a business. It is a college thing that is passed on from one senior class to another.

Mr. **Bedell.** It was not your business?

Mr. **Lane.** I earned the profits from it.

Mr. **Bedell.** Commission was it, or what?

Mr. **Lane.** It was a commission.

Mr. **Bedell.** So you operated as a commission salesman in that business?

Mr. **Lane.** Exactly.

**Mr. Bedell.** I think that is quite different from operating your own business, Mr. Lane. I had operated my own business all my life until I came to Congress and it bothers me for you to come here and tell me we don't understand competition in business, and we don't understand what equal competition is.

And at least, as far as I can tell, most of the small business people I know are not there just to get bigger and grow and control more and to have more business. Most of the small business people I know are there to provide for their families, to survive, to try to make a living, to have an opportunity to compete in a marketplace where they are not going to face unfair competition from their suppliers, or from other people.

And it would be fine for us to be having this argument. I understand that there are people who have differences. But for you to come here as the head of the Office of Competition and then try to say you shouldn't really worry about whether we have free, equal competition, and I hear you saying we shouldn't have an opportunity for the small guy to survive, and it tells me we have problems in the Department of Energy that are just absolutely beyond my comprehension.

It really bothers me because maybe people don't know you and I were friends before you took this position and I hope we are still friends, but it appears to me something happened to you when you went to the Department of Energy. I just can't understand for the life of me that what you are trying to tell us is, "Don't worry, if you are free and 21, don't worry about what your chances are." If they sign a contract and we have deregulation which changes the whole thing, it is a different ball game.

I hope one thing we can get straight—all you talk about is subsidization. Your study is whether to have subsidization or not. If that is your whole study, as far as I am concerned, forget it. I am not disturbed over that, and it doesn't tell us anything.

Suppose there is no subsidization whatever, and suppose the person who controls the supply controls the lease for that person to whom he sells. And suppose he can make more money on his own company operated station as you have documented as the case in your study. If his interest is to try to make more money, it seems to be reasonable that he would be better off to sell his product through his own station than through you who have the lease.

So he doesn't subsidize anything. He certainly has every opportunity to push you out of business so he can have more of that business, so why should he subsidize it? From all I have seen of free enterprise, the one purpose is to try to make a profit.

**Mr. Lane.** The last time I was up here, we discussed the fact that the statute which was passed by the Congress in June 1978 does indeed request and require a study regarding subsidization.

That may not be your concern, it may not be the concern of other members of this subcommittee, but it most assuredly is what the Congress required in June 1978. We are also looking at other issues.

We have looked at trends in market shares and we have found that a number of different classes of customers, not just refiners, but jobbers and independent marketers, have increased. I don't think I have conveyed properly the significance of that fact.

The significance of that fact is that these are all classes of marketers which under the regulations have the opportunity to operate high-volume stations. I am not talking about the capability of operating it. I am sure most dealers, perhaps all dealers, have the capability of operating a high-volume station. But I am talking about the ability under the regulations, No. 1, to buy, as jobbers do, at a price discount from dealers that is required by the regulations. That puts the jobbers in an advantageous position over the dealers. Those jobbers who buy for 4 cents a gallon less than the dealer is permitted to buy under the regulations can take that gasoline and run it directly through their own company operated stores.

Second, they have the right under the regulations to increase the volumes they purchase from their suppliers. The dealers do not have that right. Those two rights give the refiners, jobbers, and chain marketers a substantial advantage over dealers in a situation where there is a trend, in any event, toward fewer and larger volume stations.

[The committee took a short recess.]

Mr. **Bedell.** The committee will come to order.

I should announce that Congressman Gonzalez regrets that he is unable to be at the committee meeting. He had an important markup that conflicted and he wanted me to enter into the record that he certainly wanted to be here.

I believe you said before the recess that the situation you have described is competitive, and use the fact that apparently you checked Fort Wayne, Ind., and found you didn't have subsidization of pricing to prove otherwise.

I would ask one question, and that is, do you feel that the open availability provision, open supply provision in the bill would tend to increase or decrease competition?

Mr. **Lane.** Let me make three points. I will come to that one third. First, I want to correct the record in that I was also a partner in a law firm here in Washington. If that qualifies as business experience, I would like to make sure that gets in the record.

Mr. **Bedell.** I am not sure you have helped yourself.

Mr. **Lane.** I am not sure that it is a business. Some would consider it a profession and some would consider it to be something else, I suppose.

The second point, regarding subsidization, I don't think anywhere in the study did we say everything was fine, or everything was great. I don't know where in the study you are referring.

Mr. **Bedell.** I am referring to your testimony.

Mr. **Lane.** My testimony didn't say everything was fine or great either. I have no qualms about the question, if you feel or if the Congress feels that as a matter of fairness or as a matter of social policy that independent dealers, or lessee dealers, should be protected from competition from their suppliers or that the relationship——

Mr. **Bedell.** Excuse me. Nobody said that, and I resent your trying to twist it around that way. We are saying there should be free, equal competition. If you think I have said anything that said that people should be protected from competition, then I would like to know where you read that, because I do not believe that.

Mr. **Lane**. Under this bill you would protect a Sun Oil dealer from competition from a Citgo company-owned gasoline station.

Mr. **Bedell**. No, we would not; we would simply say it is proper for there to be fair, equal competition—this bill would say we don't believe there is free, equal competition when one of the competitors, who would make more money selling it himself, as we have shown, controls the supply, the price, and the lease terms and the credit terms and all these other things of his own competitor.

I happen to believe that is not free, equal competition and this bill says he will not be able to compete under those types of terms. If he wants to compete with his other major competitors, they will have free and equal terms of competition.

But we don't say the big guy has the opportunity to use his size to take advantage of his size and not let the little guy have a chance.

Mr. **Lane**. I am sorry if I misrepresented what you are trying to say; but the point I was trying to get to was that if you feel as a matter of equity, as a matter of fairness, that major companies should be prohibited from taking certain actions or engaging in certain forms of business, that other companies should be restricted and various other restrictions should be put on the marketing of gasoline, because the relationships in the marketplace, between big firms and little firms is not, in the judgment of the Congress as a whole, a fair relationship, then I have absolutely no objections to that, and there is nothing in the study that says that doing that is bad.

All I am trying to point out here is that it is possible such action will have some costs to the consumer. It is possible that it will have some efficiency costs, that there will be a less efficient form of distribution, and that the price of gasoline may be higher.

Now, there are a lot of situations in this country where we pay some efficiency costs to promote fairness. There are dozens and hundreds of such situations, and if you feel as a matter of fairness or equity that it is worth while paying some efficiency cost, having perhaps higher prices for gasoline in order to protect independent retail dealers in whatever form, then fine. I don't have anything to say about that, because that does not have anything to do with competition.

That has to do with fairness, social policy, and things that are removed from at least what my view is of competition, which is a process of maximizing efficiency and minimizing costs in the economy by permitting free entry and exit of firms into different markets.

Mr. **Bedell**. You were going to answer the other question, the open supply.

Mr. **Lane**. The original title III of the Petroleum Marketing Practices Act attempted to do something similar to the open supply provision of this bill. There is also the Robinson-Patman Act which, in a relatively weaker form, attempts to do the same kind of thing.

I think the effect of any provision which prohibits price differences, or limits the degree to which you can sell at different prices to different people, is generally to reduce price competition, for one reason; that is, price cuts usually don't come in the form of a company deciding it is going to reduce its prices across the board, at least in many industries they don't, and in petroleum refining before regulations I think they didn't also. They didn't come in the form of just an across-the-board price reduction.

They come when, in order to get a particular account, a firm is willing to give a particular customer a break. So it gives that customer one-quarter cent off what it is charging anyone else because it wants to get that account, or one-half cent, or whatever is necessary to get that account. In many industries, including the refining industry before the imposition of controls, that was the way in which price cuts came about, when they did come about.

Mr. ROSENBERG. Mr. Chairman, I think there might be a misunderstanding here. My understanding of the chairman's question was a reference to the open supply portion of the legislation.

Mr. BEDELL. You can buy it from anyone.

Mr. LANE. I am sorry, I was referring to the price discrimination provision. Under the antitrust laws there is a very wavy line right now on the question of open supply, as you know. It has been decided over the years in a number of cases.

Mr. BEDELL. Do you understand the question? Do you believe open supply would increase or decrease competition? That is my question. It seems to me it is yes, or no, or I don't know.

Mr. LANE. I don't know. I think it would decrease the number of dealers.

Mr. BEDELL. Do you think it would increase or decrease competition to have people buy from whom they want to buy?

Mr. LANE. I don't see that it would increase competition. I'm not sure it would decrease competition. I think it would reduce the number of dealers that would be in existence, the viability of the lessee dealer as a form of distribution.

Mr. BEDELL. I presume you think if you were to be told you could buy your groceries only from one store that it would increase competition?

Mr. LANE. In answer to that precise question; yes.

Mr. BEDELL. You said, to increase it so anybody could buy from who they wanted to would not increase competition.

Mr. LANE. I said, I don't know what the effect is of the open supply provision.

Mr. BEDELL. So the answer is, you don't know whether it would increase or decrease competition for me to only be able to buy groceries from one store?

Mr. LANE. That is the opposite of your provision. The provision says that two people cannot contract to require that one person buys all of his supplies from the other person for a particular period of time.

Mr. BEDELL. This clearly shows your prejudice, Mr. Lane. You think when someone leases a station that somebody else owns, that the person who leases it has the opportunity to name what the terms of that lease will be. That is just so clear.

I have talked too much, but I have to tell you, there are a lot of people who think the major oil companies control the Department of Energy. You are aware of that, surely. And I am telling you, you are not helping that at all by your testimony here today. Time after time after time there are things that would seem to be so obvious and you try to say you don't think they are the case.

I have spent too much time already. I know some staff want to ask questions. Minority staff had some questions.

Mr. **Fenili**. I wanted to comment on the last question. I think what Mr. Lane is trying to say—we have talked about this briefly—is essentially that if you allow the lessee dealer to essentially have open supply, he is trying to say in one instance there will be more competition, the dealer could go out and buy gasoline from somebody else.

Mr. **Bedell**. He didn't say that.

Mr. **Fenili**. You are saying that.

Mr. **Bedell**. It seems it would be clear.

Mr. **Fenili**. The lessee dealer simply got into the business by essentially renting a station from a particular refiner. Now to the extent that the refiner does not want to provide a station to a dealer so he can sell somebody else's gasoline, then the question is whether the refiner would be less likely to want to put a dealer in that outlet.

Mr. **Bedell**. That was not my question.

Mr. **Fenili**. The question is on open supply, and it seems to me that the answer is mixed. On one side, it may be better for a dealer to get low-priced gasoline. On the other side, there may not be as many dealers.

Mr. **Bedell**. You are making an assumption there would therefore be less dealers.

Mr. **Fenili**. We are saying that, if it reduces the benefits of the refiner having a dealer, it will probably have a negative effect on the number of dealers the refiner wants.

Mr. **Bedell**. Sure, and would increase the opportunity for there to be independent dealers, would it not? Apparently you don't care whether there are independent dealers or not.

Mr. **Fenili**. If the dealer wanted to be an independent dealer why would he have signed a Texaco contract?

Mr. **Bedell**. Oh, for a great many reasons. He might not have had the money for one thing. There are any number of reasons why he would do that, it seems to me.

Mr. **Lane**. The only point we are trying to make is that the open supply provision would have mixed results as it relates to competition.

It would have some results which one might say prima facie would seem to increase competition, but other results which might decrease competition in a number of different forms.

Mr. **Bedell**. Mr. Quayle, do you have questions?

Mr. **Quayle**. I will get caught up.

Mr. **Bedell**. Does minority staff have any questions?

Ms. **Hoppe**. My questions were submitted by Mr. McDade, ranking minority member for the full committee, who has taken interest in this legislation. His questions are as follows:

If the divorcement legislation would become law, what would you suggest would be its impact on gasoline marketing in this country, and more specifically, do you feel it would result in a price reduction or increase to consumers? Do you expect a decrease in the number of stations and are there any other changes you would envision?

Mr. **Lane**. It is difficult to answer that question depending on whether it is talking about just divorcement, or whether it is talking about the whole bill.

I think, if you are talking about the whole bill, the effect of the whole bill is probably to increase the price of gasoline in the country, because it would reduce the number of different ways that gasoline could be sold and the ability of independent refiners and others to innovate in selling gasoline at a lower price.

Ms. **Hoppe**. Do you have any estimate how much of a cost increase that would be?

Mr. **Lane**. I think it would be very difficult to say. The recent information I have seen suggests that, in a DOE audit in Maryland, 50 percent of the gasoline stations that were audited were found to be overcharging. I think on a nationwide basis that the proportion that have been found in audits to be overcharging has been less than that.

But I don't know whether that has anything to do with the divorcement bill or whether it is something else that is peculiar about Maryland.

Ms. **Hoppe**. Dealing with the section of the bill that provides for dealers to purchase the stations under divorcement decree if they want to do that, do you have an estimate of how much it would cost the dealer to buy the station and in the hearings around the country, have you observed any willingness on the part of dealers to buy their station and operate it themselves as the owner-operators?

Mr. **Lane**. I think that has been done in a number of cases.

Mr. **Bedell**. Would you yield?

The bill does not require them to sell the stations.

Ms. **Hoppe**. Yes; the reason I was asking about the cost was because of the SBA loan guarantee provisions.

Mr. **Lane**. There have been some dealers who have bought their own stations. As far as the cost of a station?

Ms. **Hoppe**. Yes.

Mr. **Lane**. I think we have different numbers. We don't have any very good solid numbers about what the cost of a station is, but just as a ball park kind of thing I would say today a relatively high volume and successful station would be anywhere from $150,000 to $250,000, or even $300,000. That is a new station. If it is an older station it probably would be worth less than that.

Ms. **Hoppe**. Thank you. I have no further questions.

Mr. **Bedell**. Does minority counsel have questions?

Ms. **Nord**. Thank you, Mr. Chairman.

Mr. Lane, as the chairman has stated, the purpose of the legislation is to guarantee competition in the marketplace. These hearings have focused on the decrease in the number of dealer owned and operated stations and an increase in the number of company owned and operated stations over the last several years.

I am wondering whether that gives a true picture of the retail market. Has there also been a growth in the number of convenience stores and chain operators and how does that growth, if there has been such, compare to the increase in the number of company owned and operated stations?

Mr. LANE. We don't have figures actually on the growth of the number of stations owned by jobbers, or the volumes, but we do have figures on the volume sold by the 40 leading refiners to jobbers and unbranded marketers as compared with the volumes which they supply directly to their own stations or supply directly to dealers.

What we found generally is that between 1972 and 1978 the company stores have gone up from 6.5 to 13.5 billion gallons. The branded jobbers have gone up from 20.5 to 30.9 billion gallons, and the unbranded marketers have gone up from 11.6 to 19.8 billion gallons. Taken together, the unbranded marketers and the branded jobbers have gone up 18.6 billion gallons. With respect to company stores, if you break that down between the majors, which would be divested by this bill, and the others who would only be subject to the refiner sales ratio, you find the majors have increased by 3.5 billion gallons, and the others have increased by 3.4 billion gallons.

Ms. NORD. How does that work out in percents?

Mr. LANE. Company-operated stations have gone up from 6.7 percent to 11.8 percent, or 5.1 percentage points.

The sales to branded jobbers from 21 to 27, or 6 percentage points. Sales to unbranded have gone from 11.9 to 17.4, a 5.4 percentage point increase.

Those three categories have more than eaten up the decline of sales to lessee dealers, and to open dealers.

Ms. NORD. I guess the point I was trying to figure out was has, on a percentage basis, the amount of gasoline marketed through the company owned and operated stores increased at a greater percent than that marketed through convenience stores, on a percentage basis?

Mr. LANE. We don't have figures on convenience stores, just to branded jobbers and unbranded.

Ms. NORD. With respect to the question of open supply, you indicated that you felt if there was open supply, the numbers of dealers would decrease. I am not sure I fully understood why you were saying that and I wonder if you would expound on that?

Mr. LANE. A refiner has a number of different choices in the way it can sell gasoline. It could sell gasoline either at the rack or through its company operated stores, or through a dealer network.

It has those three choices, and let us assume that only this one provision of this bill were enacted. The refiner, looking at these three choices, sees certain advantages and disadvantages. If it builds a station and decides to put a dealer in that station, then there are certain advantages of having that lessee dealer there.

One advantage is that he can count on that station as an outlet to a certain extent.

Now to any extent that any legislation takes away some of these advantages, and says, well, you can have a lessee dealer and he can buy your competitors gasoline, if he wants to, and sell it, that is going to make it relatively less advantageous for a refiner to decide to go the lessee dealer route. It is going to make it relatively more advantageous for the refiner to try to go some other route.

I think in that situation, over time, if this particular provision of the bill were enacted and enforced very stringently, that you would have fewer dealers, assuming, again, that there were no other pieces of this bill enacted.

I think when you take the whole bill together it is very difficult to figure out exactly what would happen.

Ms. **Nord**. You said if the provisions were enforced. What kind of enforcement problems does the open supply provision raise?

Mr. **Lane**. I think it raises a lot of interpretation problems. It is not clear to me, and I presume it would become clear in the legislative history, whether this is intended to overrule laws against comingling, and so forth. It is not clear to me whether it does that.

I think it would be more of an interpretation problem than it would be of an enforcement problem. I don't see that much of an enforcement problem from the provision, personally. There may be but I don't see it.

Ms. **Nord**. To the extent that different brands of gasoline are separate and distinct entities and can be differentiated between the various realms, there is nothing in this bill that would allow the dealers to store them in the same tanks——

Mr. **Lane**. It is not clear to me about that, whether the bill would allow them to store them in the same tanks or not. It is not clear from the bill whether that would be the case.

Ms. **Nord**. Finally, I have been told by at least two major refiners who would be impacted by the legislation that right now contracts they have with their dealers do not prohibit them from selling gasoline made by another company. Do you know if this is a generally accepted provision?

Mr. **Lane**. That whole area is a relatively complicated area of the antitrust law. The Supreme Court said in the *Standard* stations case that a lessee dealer could not be held to an exclusive dealing contract.

However, there are a number of exceptions to that. One of the exceptions is a general rule against misbranding. For example, you couldn't sell Conoco gasoline under the Exxon flag.

Moreover, let's say you have 5,000 gallons of Texaco gas or Exxon gasoline left in the tank and you bring in a load of XYZ gasoline. Presumably, you could sell the whole thing as XYZ gasoline, assuming the XYZ company did not object. But then what happens when you want to pick up another load of Exxon and you still have 5,000 gallons of the mixture in your tank.

The people from Exxon will say some of that gasoline in your tank is the old XYZ gasoline and you can't sell any of this under the Exxon label until you have sold off all of that. This makes it difficult because you never want to drain a tank dry.

There are a number of other problems that go along with this. I am not prepared to fully elucidate the antitrust laws at this point, but perhaps the people from the FTC, whose job it is to enforce them, might be more familiar with what the current law is on this subject.

Ms. **Nord**. Thank you.

Mr. **Bedell**. Thank you.

I guess majority counsel has a question.

Mr. **Rovner**. I have several questions, Mr. Lane. Mr. Scheuer couldn't be here. He is protecting competition through the FTC at the moment.

One question arises from your report. You seem to imply that the traditional three-bay station—I think you singled that out—couldn't be a high volume seller. The high volume is not defined. Does 100,000 qualify, because we had testimony here this morning and in other reports we have gotten, that they can sell 100,000 gallons a month. They can pump it through the traditional gasoline station; if they have the product to sell.

Could you elaborate on what you meant in the report?

Mr. **Lane**. I don't think we said it could not be a high volume pumper. I think what we said——

Mr. **Rovner**. Not well suited, was the phrase.

Mr. **Lane**. Yes; if you were going out to build a station you intended to be a high volume pumper, you probably would not build it as a three-bay station. Just in terms of the configuration, most three-bay stations have two- or three-pump islands and most high volume stations that are really what you would consider to be a pumper have perhaps eight- or ten-pump islands.

Any station can be a high volume station if it is getting the product at a price which is below what everybody else is selling the product at in that particular neighborhood.

Mr. **Rovner**. There is nothing physical about the station that precludes it from selling 100,000 gallons of gasoline a month?

Mr. **Lane**. I think the point is in a normal marketplace, where you did not have price controls giving some people price advantages over other people, a station which had a canopy and six- or eight-pump islands and maybe one cashier, or something like that, would essentially tend to have lower unit costs on the gasoline that it sold than a station that had maybe two- or three-pump islands. These lower unit costs would enable the station to have a lower price and higher volume.

Mr. **Rovner**. Have you done a study of that at all, Mr. Lane?

Mr. **Lane**. No.

Mr. **Rovner**. There is a thesis that runs through your report that an independent service station cannot be as efficient as one owned and operated by a major oil company. I find no evidence of this either in my own background when I was doing energy work, nor do I find it in the report. Yet it keeps cropping up, the efficiency of the large station is equated with the efficiency of the majors. I don't know where the equation comes from. You keep talking about it. Don't you mean it isn't well suited. When you mean it can't get the product to sell.

Mr. **Fenili**. We have addressed this question in two places.

First, we had a hypothetical in chapter 1 to try to explain what we observed in the market in the last 7 years or so.

The question was, Why would there be an advantage to having five stations selling 20,000 gallons each rather than having one station selling 100,000? On the face of it, you would say, why not move 100,000 gallons through one station.

What we try to suggest is, by having five low-volume stations, under certain conditions, you may be able to charge a higher price in selling those 20,000 gallons, maybe you are offering more convenient locations.

To get people to come to a 100,000-gallon station to buy the gas, you may have to lower price. Once you have a situation where you have higher prices and more stations and lower prices at one station, there is no rule that says one is better than the other. You have to start looking at the numbers and doing addition and subtraction.

We suggested that in the 1950's and 1960's when they used to go to low-volume stations they preferred it because they could get higher pricings through the low-volume stations, albeit they had higher costs; they had to provide more stations.

You may feel that the three bays were put there so that the dealer, whoever ran the station, would have another additional place to get income since he wasn't selling a lot of gasoline.

What happens in the hypothetical if the cost of providing stations starts to increase and maybe consumers become more price conscious? They are willing to pump their gasoline, or go to high-volume stations to get lower prices. If simultaneously, the land cost of providing lots of stations were to go up, the hypothetical predicts that refiners would prefer to have fewer but higher volume outlets.

We are not saying and never said that lessee dealers could not provide higher volume outlets. In fact, the data presented in chapter 2 essentially states that, for the top eight companies, which have the largest number of dealers, the average volume between 1972 and 1978 has gone from 31,000 to 47,500 gallons per month.

So, yes, it looks like lessee dealers can pump more gasoline. We are not saying they can't do it. Obviously, all lessee dealers can't pump more gasoline.

Mr. **Rovner**. There is a universe of gasoline to be sold, and obviously the refiners are not going to drink it so they have to sell it through some means. It has to get from the refinery into somebody's automobile or the oil companies are in real trouble.

Mr. **Fenili**. This is the second part of the answer. We went out in the title III study and observed that dealers were going out of business. We were told it was because some firms were subsidizing, and they were going out of business because refiners were basically funneling gasoline away from the dealers, bleeding the volume down and funneling it to the company stores.

We don't observe that. We observe for the companies with the largest dealer system that the average volume of dealers are going up. We ask, what is the problem with dealers? If there was an increase toward higher volume stations, what is happening that prevents dealers from sharing in that? We looked at the DOE regulations. Refiners can build new stations, jobbers can increase their volume, unbranded marketers can increase volume, but dealers cannot.

As a hypothetical, imagine a dealer, a Shell dealer, if you like, who has a 30,000-gallon-per-month allocation, and let's say that somebody else builds a pumper next to him, maybe not Shell. Many times when we talk to dealers the people who put up the building next door to them were other refiners, many times they were flying the flag of a refiner but being run by the company employees of a jobber.

What would happen if the dealer says, "I will cut my price and try to compete with the new station." He can cut his price and sell his 30,000 gallons faster. He doesn't have any way of getting more gasoline.

What if the Shell Oil Co. said they would like to have that station compete with the new station? They would have to follow the DOE provisions to get more gasoline to him. There is no way under certain circumstances for Shell to add more volume to the station because of the DOE allocation regulations.

That is what we point up in appendix 4.2, where we feel if there was a changing market condition, the thing that prevents dealers from showing they can compete, too, and take part in these changes in economics is the regulations.

Mr. ROVNER. The problem is with the DOE regulation?

Mr. FENILI. We feel they are the major problem for the dealer.

Mr. BEDELL. The chair would request that the questions and answers be as short as possible. It is 10 minutes to 12 and we have another set of witnesses, and I didn't time it but that was not exactly a short answer.

Mr. FENILI. I felt he basically was telling us what we said in the title III studies and I felt we should clear the point.

Mr. BEDELL. We didn't expect you to go through the whole title III study.

Mr. ROVNER. On the crossbranding under the allocation program, there was mandatory crossbranding back in 1974 and 1975. No major was in a position to preclude the people who flew their flag, as it were, from selling another kind of gasoline out of that station. There was just that kind of shortage. Nobody was saying you have to let your drivers go by, even though you could buy gasoline from another major.

Do you find——

Mr. LANE. You are referring to the shortage in 1973-74?

Mr. ROVNER. Yes. The allocation regulations permitted crossbranding. That being the case, do you find that there is anything in that experience that leads you to suppose that open marketing—open purchasing—might be useful here?

Mr. LANE. As I said, I think the open market, open purchasing concept, is one that is difficult to assess entirely because it has contrary effects. The situation that prevails during a shortfall when you have a regulatory requirement may be different from a situation that prevails in normal supply conditions, under decontrol conditions.

I really don't feel I can make a more complete answer to that question than that.

Mr. BEDELL. Mr. Quayle?

Mr. QUAYLE. Thank you, very much, Mr. Chairman.

Mr. Lane, I was reading your statement here on page 2 and I was struck by the fact that you said that the study, referring to the title III study, concluded that the loss in the market share was probably more attributable to the disadvantage of dealers under DOE's current regulatory scheme than other predatory pricing practices by the integrated refiners.

Could you perhaps elaborate a little on that and suggest some of the specific regulations? I presume you are talking about the allocation regulations?

Mr. **Lane**. Both price and allocation regulations. The price regulations essentially establish classes of purchaser as they existed on May 15, 1973. In many cases for many companies at that time they were selling on a DTW at their dealers and at a jobber buying price to jobbers, and the jobber buying price was 3 to 4 cents different from the DTW.

The companies have been required to maintain those class of purchaser differentials, so if you were a jobber who was in business in May 1973 and another fellow was a dealer in business at that time, then you are buying at a price that is 4 cents a gallon below the price at which he is buying.

On May 15, 1973, the jobber might have been serving some rural area, or some area where there were no directly supplied dealers.

Subsequent to that time what has happened in a number of cases has been, No. 1, that the jobber has built stations and put his own company-owned employees in those stations and now he becomes a chain retailer, if you will, and, of course, he can build the stations anywhere he likes.

So he can build new stations, and he is buying gasoline at a price which is 4 cents a gallon below what the dealers in that area are buying gasoline. That 4 cents is not a complete advantage for him because he pays transportation costs and insurance and so forth, but in general those costs are substantially less than the buying price advantage.

So he can go and build new stations and supply those stations directly, and he has a buying price from that same refiner which is much better than the dealer.

Then we come to the allocation regulations. Under the allocation regulations, a jobber can upward certify. He can say, "I am buying a new station and am a willing supplier to that new station; therefore, I can demand from my refiner an additional amount of gasoline to be added to my base period volume."

Now, no one is saying this process is completely smooth. The refiners can resist and argue, and they have. There has been a lot of to and fro on this issue, but in general a large number of jobbers have figured out a method to, if you will, game the system, to get additional volume.

So they have additional volumes, with the ability to put those volumes through new stations and to buy those additional volumes at a lower price. The dealer is stuck with his 1972 or 1978 adjusted volume, and he is buying at a price which is 4 cents higher, 3 cents higher net, let's say.

Given those circumstances, I think it is hardly surprising that there is, among other things, a downturn in the number of dealers, particularly when you look at the overall trend between 1972 and 1978, or 1979 or 1980. The trend has been in each year there are fewer and fewer stations and each station by definition sells larger volume on average.

So that there is a trend toward higher volume stations. The dealer who is stuck with his 1972 volume is, therefore, not kept in the same place. In other words, the dealer has 30,000 or 40,000 gallons per month, or whatever it was in 1972 or 1978, and that is all he is legally entitled to during a period when fractions are below one, as they are right now for most companies.

The jobber may have dozens of stations, he may have closed down a few of those stations, increased the volumes to the remaining stations, thereby cutting his costs and moving the same amount of volume. He may upward certify because he buys or builds new stations and shuts down old stations. He doesn't have to downward certify, so he has higher and higher volumes for perhaps either the same or slightly growing, or even diminishing number of stations. He has higher volume and lower pricing.

The same thing is true to a lesser extent of the people classified as independent, nonbranded marketers, only to a lesser extent because in general I think they buy from refiners who have somewhat higher prices so they are less able to take advantage of some of these opportunities.

But those are the factors that we see discriminating against the dealer.

Mr. **Bedell**. Excuse me.

I really want you to give a complete answer, but this answer has been more than 5 minutes already. I want Congressman Quayle to hear all of your answer, but I would hope we wouldn't take forever.

Mr. **Quayle**. I find it most interesting, because I think this is very important, whether these regulations are going to attribute, as your report indicates, or whether it is predatory pricing or something else.

I will cut it off, and go with the wishes of the chairman, but I find this information quite interesting, at least to me.

Mr. **Bedell**. It is your time, just so we realize we have another witness we have to hear.

Mr. **Lane**. Let me quickly wrap up and say, especially we see two factors affecting the marketplace.

We see a trend toward fewer and higher volume stations. There is absolutely no reason why those stations could not be operated by lessee dealers. If those stations were operated by dealers, it might conceivably be the lessee dealer who might want to open a different kind of station. The new lessee dealers might come in and one lessee dealer might operate two or three stations which were configured for high volume gasoline sales.

The point is, there is no reason why a lessee dealer cannot operate high volume stations, and there is no reason why that group of people cannot keep their market share over time, just in the normal workings of the economics. What is affecting them is the regulations.

In this context of higher and higher volumes through fewer and fewer stations, one group is singled out for especially bad treatment under the regulations, and that is the lessee dealer, or the dealer in general. It has been a combination of those two circumstances; at least it is our working hypothesis that it has been the combination of those two circumstances which has resulted in the demise of a lot of independent dealers over the last few years.

Mr. **Quayle**. Do you recommend certain revisions with the pricing and allocation regulations that apparently have contributed to the demise?

Mr. **Lane**. I would recommend deregulation. I don't believe that in terms of effect on competition, there has been anything more harmful in the petroleum gasoline marketing industry than the regulations, and I don't see that they accomplish very much in terms of consumer protection.

But I do see that they have very deleterious effects on the marketplace, principally because in any kind of marketplace where there are shifting circumstances, there are going to be rewards and punishments. Everyone is not going to come out equal. Some will benefit and some will lose.

But the regulations shift those rewards and punishments in such a way that they don't have anything to do necessarily with how efficient you are or how good you are as a marketer. They shift them in such a way that they depend on what your particular status was at a particular point of time in the past. That has been very deleterious to competition in the narrow sense and has created a situation where everybody realizes now the way to survive in gasoline marketing is to come to Washington and either come to the Congress or come to the Department of Energy and ask for a rulemaking or piece of legislation that will protect them, and that I think has deleterious consequences with respect to the country as a whole.

Mr. **Quayle**. What predatory pricing practices did your report study find with the integrated refiners?

Mr. **Lane**. We found that the evidence was not, at least from Fort Wayne, consistent with a predatory pricing hypothesis.

Mr. **Quayle**. Fort Wayne was the only one?

Mr. **Lane**. Yes.

Mr. **Quayle**. Your statement says that attributed more to the decline of, which indicated to me there was some predatory pricing practice.

Mr. **Lane**. We haven't done the other four, that is why that is qualified. We don't know what we are going to find in Atlanta or Los Angeles and that is why it is qualified.

Mr. **Quayle**. This second part of the study that is going to come out in October, or some time, can you give us some guidelines of what you are going to focus on in that, and what kind of information would be available to us?

Mr. **Lane**. We have a number of areas we are going to look at. No. 1, the other four SMSA's, as I said, Los Angeles, Atlanta, Boston, and Houston. We are going to look at functional profitability by looking both at internal company documents and at the financial reporting system which is a form that we have at DOE.

We are going to look at predatory intent, rent increases, alleged predatory costing practices, try to determine whether these practices are profit maximizing practices, or whether they are intended to predate.

We are going to look at more of the historical documents we have which go back to 1970, and we are going to also look at some additional information on a State-by-State basis in terms of changes in market shares, so we will be able to answer any regional questions that arise.

We also are going to be able to look at the refiners that have had the largest trend toward companies stores, and to the extent that we can with the data, we are going to see whether they have engaged in a predatory movement in that direction; in other words, whether they are "predating" or profit maximizing.

I think that is about it.

Mr. **Quayle.** One last quick question which will take a yes or no answer.

Do you believe, and I assume you do, that deregulation of the pricing allocation system would be a superior vehicle rather than the divorcement legislation to have survival of independent service stations in this country?

Mr. **Lane.** At the moment, yes. We can be persuaded by the evidence.

I am not necessarily saying now what the results are going to be this fall. They may be different because we are looking at more data. Right now, I would say that I think deregulation is clearly a very beneficial thing from a competition point of view, and I would say it is more beneficial in my view than the divorcement bill that we are discussing.

Mr. **Bedell.** Would the gentleman yield?

Mr. **Quayle.** I would be glad to.

Mr. **Bedell.** The purpose of the bill is not whether we should have deregulation or the bill, at least in the opinion of the Chair. The need for the bill comes because of deregulation. With deregulation there are no protections for the person who has to compete with their supplier, where in the past there have been some protections.

Mr. **Quayle.** If I understand, what Mr. Lane is talking about is that we don't have deregulation now, that we have regulation, and by removing the pricing and allocation of controls, that we would have competition and we would have the better possibility of having the survival of the independents than passage of divorcement legislation. That is what——

Mr. **Lane.** We would have a more competitive marketplace.

Mr. **Quayle.** That is what he is saying, and that is what I wanted to make certain, he would say on the data he has right now that the most immediate approach would be deregulation, which we do not have.

Mr. **Lane.** That is correct.

Mr. **Bedell.** I think we will have to recess for a quorum call that we have. I am sorry this is taking so terribly much time. I would just like to say to the people who are here with the FTC, that I certainly appreciate your indulgence and we will resume in order to hear that final testimony.

Thank you.

Mr. **Lane.** Thank you, Mr. Chairman.

[Brief recess.]

Mr. **Bedell.** The subcommittee will come to order.

Our final witness is Mr. Ronald Rowe, Assistant Director of the Bureau of Competition, Federal Trade Commission.

Before we start, Mr. Rowe, I want to offer my most sincere apology. I am sorry we held you so long, and I appreciate very much your staying to testify.

## TESTIMONY OF RONALD B. ROWE, ASSISTANT DIRECTOR, LITIGATION, BUREAU OF COMPETITION, FEDERAL TRADE COMMISSION

Mr. ROWE. No apology is necessary. I have received quite an education here today.

Mr. Chairman, members of the subcommittee, thank you for this opportunity to present views on H.R. 6722. My name is Ronald B. Rowe. I am Assistant Director for Litigation in the Federal Trade Commission's Bureau of Competition with responsibilities for petroleum competition matters, including the Commission's *Exxon Corp.* case, docket 8934.

H.R. 6722 deals with a number of issues that are included in the *Exxon* case. Because these issues may ultimately come before the Commission, views presented here today are those of the Bureau of Competition alone. They have been approved by neither the Commission nor by any individual commissioner.

In response to your joint letter of May 12, 1980, to Chairman Pertschuk, the bureau staff reviewed H.R. 6722. The proposed legislation, as we understand it, would require the divorcement of directly operated motor fuel retail service stations by certain motor fuel producers and suppliers; would regulate certain aspects of the sale of motor fuel by producers and refiners of motor fuel; eliminate certain restrictions on a dealer's source of supply and resale of product; and provide special loan guarantees to small business concerns for the acquisition of motor fuel retail service stations.

The following is a summary of our observations and comments on the substantive provisions of the bill.

The divorcement provisions aside, H.R. 6722 provides a number of important provisions that deserve further consideration. For example, the bill's provisions prohibiting producers or refiners from restraining, interferring with, or in any way preventing the dealer-operator from purchasing alternative sources of supply, and reselling the same to the public, with adequate disclaimer of brand name—that is page 6, paragraphs (2)(d) (1) and (2), could be highly procompetitive.

These provisions would permit such dealers to market gasoline, as well as gasohol, supplied from competing sources, when available at competitive prices.

In the absence of allocation controls, these provisions might aid and facilitate the movement of product to locations where there is immediate need because of temporary regional shortages such as in cases of high seasonal demand.

The rack pricing provisions of the bill, pages 5 and 6, paragraphs (2)(c) (1) and (2) could also be beneficial to independent dealers. Rack pricing should prevent discriminatory pricing in product acquisition costs and assure a greater degree of equal footing at the start of the race for business.

After decontrol, this provision could well increase the availability of product at a nondiscriminatory price to independent marketers and reestablish this class of competitor as a more vital force in the marketplace of the 1980's.

Likewise, the bill's prohibition against subsidizing the cost of product to company operated stations as a companion to rack pricing appears to reinforce the necessity of fair treatment among classes of competitors.

These proposed reforms of the marketing and distribution practices of the major producers and refiners could be both far reaching and extremely beneficial to both the industry and the consumer.

Similarly, when combined with existing State and Federal laws creating dealer rights, the bill's provisions creating a right of first refusal, independent appraisals of service station properties prior to sale, and guaranteed SBA loans to independent dealers for purchasing station sites, should provide an adequate measure of protection against arbitrary, nonconsensual loss of service station sites by independent dealers via lease cancellations, nonrenewals, and outright takeovers.

The combination of these dealer rights would appear to create an immediate powerful shield against any policy of arbitrary landlord-supplier takeovers.

Given the possible immediate efficacy of these provisions in ameliorating present competitive conditions at the retail level, it is unclear whether the retail divorcement provisions of the bill, which would eliminate an entire class of competitors, that is, the company owned retail operation, are warranted, particularly when more limited remedies than absolute divorcement may provide much of the competitive protection sought by the divorcement advocates.

In this connection, we note that Congress is still awaiting the completion of the title III study of whether integrated producers, refiners and other suppliers of motor fuel subsidize the sale of motor fuel at retail or wholesale with profits obtained from upstream operations. That is required by the the Petroleum Marketing Practices Act.

This study is scheduled now to be completed by October 1980. Its result should be pertinent to any analysis of the divorcement and subsidization issues addressed by H.R. 6722.

In summary, we think that the nondivorcement provisions of H.R. 6722 deserve careful consideration as the basis for positive reforms at the marketing level of the petroleum industry. We recognize, however, that even those provisions of H.R. 6722 may not restore and preserve competition in petroleum marketing until decontrol takes effect following the expiration of DOE regulatory authority in 1981.

In a decontrolled market, energy legislation should be directed to providing sufficient economic incentives for oil companies, both major and independent, to provide gasoline to the consumer in the most efficient manner. A balanced market made up of major oil companies, refiner marketers, and other independent oil companies, would be the desirable and probable result of the combination of decontrol and the nondivorcement provision of H.R. 6722.

I thank you, Chairman Bedell, and members. I will be pleased to answer any questions that you may have.

Mr. Bedell. Thank you very much, Mr. Rowe, for your testimony in regard to this bill.

I guess that I should point out that it should be clear, that this bill is written to be effective with decontrol.

Mr. Rowe. I understand.

Mr. **Bedell**. It would be pretty silly for us to pass legislation dealing with problems under controls and having controls expire in 16 months. At the rate legislation moves through the Congress and is enacted into law, we would be passing legislation for something in the past rather than the problems of the future.

The problems of the future, I think, are quite different under decontrol than they are under control. And those concerns we have had have gone way beyond the possible subsidization problems. It seems to me the subsidization problem is not really too relevant to what we are coming to in the new decontrol era.

Mr. **Rowe**. It is possibly relevant, Mr. Bedell, in this sense. De Chazeau and Kahn, now assisting the President in the battle against inflation, wrote in their 1959 treatise, "Integration and Competition in the Petroleum Industry," that subsidization need not be predatory to have deleterious effects against nonintegrated independents at the retail level.

However, I heard Mr. Lane of the Office of Competition at DOE refer to predatory subsidization several times. I understand the 1978 Petroleum Marketing Practices Act as it was prefaced by Congress, to require a study of subsidization in different parts.

Whether there is institutionalized subsidization by major, vertically integrated oil companies is the first part. The second part is whether that subsidization is directed at squeezing independents, and, third, whether it is done with predatory intentions in mind.

Now, De Chazeau and Kahn stated that the previous incarnation of the petroleum industry, as it were, prior to the rise of OPEC, was to maximize the benefits of the major, integrated refiners at the crude oil level, based on a 27-percent depletion allowance. Profits, the theory goes, were to be taken at that level, and therefore downstream markets were looked upon merely in order to maximize their position in crude.

Naturally, nonintegrated companies under that theory, and as explained by De Chazeau and Kahn, could have been said to suffer by way of comparison.

So to that extent subsidization is relevant and we would still be much interested in the results of that study.

Mr. **Bedell**. Apparently, you have some questions about the original report by DOE; is that correct?

Mr. **Rowe**. I understand after listening today—I said it was a great education for me—that their study is not complete, that they had looked at one market, Fort Wayne, Ind., and came to certain conclusions, and I understood them to be tentative and I understood Mr. Lane to say the jury was still out. So I guess we will have to wait and see what the study comes up with.

[See Appendix A for additional comments by FTC staff re DOE's title III report.]

Mr. **Bedell**. The first part of the study did show that it was more profitable for major oil companies to sell gasoline through their company operated stations than it was through their independent dealers. You have seen the study, have you not, which shows that.

I guess the concern some of us have is that if this is the case, then with decontrol would there not be incentive for them to try to sell more of their gasoline through their own stations than through their lessee outlets? If that is the case, would they not use whatever means were available in order to do that?

I think you have accurately assessed the fact that there are some provisions of this bill that are helpful in preventing that. The open supply provision, for example, I think is a significant help in that regard. But, if they would rather have their own station, sell their product they certainly have the opportunity through lease terms and that sort of thing to eliminate them if they wish to do so.

Do you understand the concern that exists, at least in my opinion?

Mr. **Rowe**. Certainly, I understand.

Mr. **Bedell**. I guess what your testimony says, if I read it correctly, is that you feel that some of the provisions of the bill, such as the rack pricing and the open supply, would be helpful in that regard, but that you have not studied it enough to know whether the divorcement part is needed in addition; is that correct?

Mr. **Rowe**. That is correct, Mr. Bedell.

I might add, we have done no analysis of the rack pricing provisions per se, but we have read a study by BP Sohio in 1973, which was their marketing plan, which was discussed substantially in earlier hearings this year, or late last year.

And it was a matter of some concern back in the gasoline shortages of 1973 and 1974. Even BP Sohio, and, we may assume, other major refiners, saw rack pricing as a possibly more efficient and cost reflective method of pricing. Therefore, since rack pricing seems to be based upon principles of equity, and related, according to the BP Sohio analysis, to cost, it would appear to be a rational basis for pricing at the marketing level.

Mr. **Bedell**. Does staff have questions?

Mr. **Rosenberg**. I would like to follow up on that comment about the rack pricing, Mr. Chairman.

A previous witness, Mr. Lane, had also included in his testimony comments about the rack pricing provisions, and he said, "The prohibition of price differences which is contained in this provision might result in reduced price competition among refiners and thereby increase the cost of gasoline to consumers." And then in your statement you say, rack pricing could be both far reaching and extremely beneficial to both the industry and the consumer.

There seems to be a conflict here and I was wondering if you could elaborate on that?

Mr. **Rowe**. I can't elaborate on the conflict. I can only reiterate that it would seem a pricing system which reflects the actual costs of gasoline and deals with a class of competitors at the same functional level in an inherently equal manner would appear to give that class of competitors the basis for competing and providing a better product, more efficiently, to the consumer.

There may be flaws in that analysis and there may be facts of which I am not aware in the dynamics of such a pricing system, but at least one major refiner marketer thought it was at least a worthwhile method of pricing in terms of analysis.

Mr. **Rosenberg**. Are there any refiners currently using rack pricing that you are aware of?

Mr. **Rowe**. I am not aware of any. There may be refiners who are in fact using rack pricing. I hear it discussed mostly as a concept rather than an accomplished fact.

Mr. **Bedell**. Ms. Hoppe?

Ms. **Hoppe**. I have two or three questions.

Mr. **Bedell**. Surely.

Ms. **Hoppe**. On the first page of your testimony in referring to the open supply provision of the bill you say, "In the absence of allocation controls, these provisions might aid and facilitate the movement of product."

Do I understand you think this is a needed form of protection that would be necessary after the allocation controls are removed?

Mr. **Rowe**. I think it should be seriously considered as a method of providing a competitive system after allocation controls are removed.

I think the existence of allocation controls, and I don't think anyone would disagree, exacerbate the problem which exists. It certainly did during the recent gasoline shortage.

Ms. **Hoppe**. On the next page of your testimony you talk about retail divorcement and you cite limited remedies other than absolute divorcement which may provide much of the competitive protection.

What would be the other remedies that would possibly protect the competition in the gasoline retail market?

Mr. **Rowe**. I think what the testimony is saying is that the nondivorcement provision of the bill would appear to create, assuming the existence of decontrol in 1981 and doing away with much of DOE regulatory authority, a situation where worthwhile objectives in competition at the retail level in marketing could be achieved without divorcement legislation.

Ms. **Hoppe**. Do you see amendment to the Petroleum Marketing Practices Act or the Robinson-Patman Act desirable to strengthening the antitrust in this area.

Mr. **Rowe**. They should be considered, but I don't have any particular thoughts along that line at the present time.

Frankly, because of the regulatory noise, to put it that way, the distorting effects that DOE regulations now have, it is very difficult to see at this particular time exactly how the market will shake out when there is decontrol.

Ms. **Hoppe**. Thank you, Mr. Chairman.

Mr. **Bedell**. We should mention that in appendix A on page 5, part 1 of DOE's title III report it says, "The Federal Trade Commission has, at least since 1970, turned from activist role in the Robinson-Patman Act and concentrated more of their limited resources on major cases in merger monopoly and price fixing areas."

Is that in your opinion an accurate statement?

Mr. **Rowe**. It may have been a more or less accurate statement at a given time, but I believe the Commission is even now doing an enforcement review and has indicated the continuing viability of Robinson-Patman Act reinforcement.

Mr. **Bedell**. You believe there will be a better job of using the Robinson-Patman Act trying to enforce that by the Federal Trade Commission?

Mr. ROWE. Yes, I do. I must say I am not speaking for the Commission, but from what I have observed as a member of the Bureau of Competition, certainly we view that as a tool.

Mr. BEDELL. I presume you expect an increase in money available for the Federal Trade Commission to pursue its activities?

Mr. ROWE. Just some money would be nice.

Ms. HOPPE. I have one more question because I am very interested in that.

Mr. Quayle has emphasized the antitrust aspects in this case. Kind of projecting, because I know you were not prepared to deal with this question, what would be necessary in the way of funding or personnel to help you more adequately cover antitrust enforcement, particularly in this area? Are you equipped to do it as you currently are structured?

Mr. ROWE. We always have minimum ability to deal with problems at our current funding level. However, with more dollars there would always be more resources available for enforcement. I don't have particular figures in mind and I didn't bring my budget hat with me.

Mr. ROSENBERG. Could I pursue that point, Mr. Chairman.

Mr. BEDELL. Surely.

Mr. ROSENBERG. The officials at the Department of Justice who are your counterparts on antitrust enforcement in the energy area have repeatedly told us in private meetings that the area of greatest interest to this subcommittee in the past which has been competition between integrated refiners and their own outlets which was an area reported in some detail in last year's hearings, was outside the reach of the antitrust enforcement agencies.

The Justice Department in particular seemed to feel that their mandate was to look at enforcement across brand lines, between two different refiners, and that the decision by a refiner as to how he or she was going to market his product was an intrabrand competition matter and not under the purview of the Federal Government.

Would you comment on that?

Mr. ROWE. Previously, the Commission has considered intrabrand competition to be a fairly important area, depending on the magnitude of the anticompetitive ills uncovered by the specific practices involved.

Mr. ROSENBERG. So your concern at the Federal Trade Commission might extend to some of these competitive issues such as alterations in lease terms and that sort of concern. Is that a fair statement?

Mr. ROWE. That is a fair statement, what I as a bureau member would think would be a worthwhile project to pursue. I see that aspect of the legislation, and I believe the testimony covered that aspect.

Mr. ROSENBERG. And is it your feeling that there are some abuses there to be corrected?

Mr. ROWE. I have to state that I am, as part of my responsibilities, pursuing a major case involving vertically integrated oil companies, and I am somewhat limited in what I can say from my viewing the information available to me in that case.

I would say that given my experience in my role, that there are some competitive problems that need to be pursued, and right now I am mainly interested in determining whether or not vertical integration by the very largest companies provides some sort of structural incentive that in practice over the years, and even past 1973, continues to disadvantage the other segments of the petroleum industry. It is the basic question.

Mr. **Rosenberg**. I have no further questions.

Mr. **Bedell**. We thank you very much, Mr. Rowe. We particularly want to again apologize for the fact you had to wait so long to testify, and we appreciate very much your being here.

Mr. **Rowe**. Thank you, Mr. Chairman. Thank you members of the subcommittees.

Mr. **Bedell**. Thank you very much.

The hearing is adjourned.

[Whereupon, at 12:45 p.m. the subcommittees adjourned, to reconvene subject to call of the Chair.]

# SMALL BUSINESS MOTOR FUEL MARKETER PRESERVATION ACT—H.R. 6722

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## WEDNESDAY, MAY 21, 1980

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON ANTITRUST AND RESTRAINT OF TRADE ACTIVITIES AFFECTING SMALL BUSINESS, OF THE COMMITTEE ON SMALL BUSINESS, AND THE SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCE, OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,

*Washington, D.C.*

The joint subcommittees met, pursuant to notice, at 9:37 a.m., in room 2322, Rayburn House Office Building, Hon. Berkley Bedell (chairman, Subcommittee on Antitrust and Restraint of Trade Activities Affecting Small Business) and Hon. James H. Scheuer (chairman, Subcommittee on Consumer Protection and Finance) presiding.

## OPENING STATEMENT OF CHAIRMAN BEDELL

Mr. **BEDELL**. The subcommittees will come to order.

This morning we are holding the second of a series of hearings on H.R. 6722, Small Business Motor Fuel Marketer Preservation Act. These hearings are being conducted jointly by the Small Business Subcommittee on Antitrust, which I chair, and by the Interstate and Foreign Commerce Subcommittee on Consumer Protection, chaired by Mr. Scheuer.

Yesterday we heard testimony from representatives of several Government agencies. Today we shall hear from various national trade associations representing various portions of the petroleum industry. An additional round of hearings will be held on June 4 and 5, to accommodate all those who have requested to testify on this legislation.

This morning we will hear, first, from the Service Station Dealers of America. They will be followed by the Independent Refiners Association of America. The third group to testify will be the Society of Independent Gasoline Marketers of America. Finally, the last two groups of witnesses come from the Independent Gasoline Marketers Council and the National Oil Jobbers Council.

Obviously this is a rather full schedule, and we request our witnesses to cooperate by covering their prepared statements as quickly as possible, summarizing wherever possible to allow some time for questions and dialog, and I would stress here, I hope when you answer the questions you will answer them in reasonable time. I felt yesterday we had quite a problem with answers which ran for 5 to 10 minutes. We just will not be able to do that sort of thing if we are going to get through our full witness schedule today. Wherever you can, we would ask you to summarize rather than read.

Mr. Scheuer?

Mr. **Scheuer**. I am very happy to be cochairing this set of hearings with my distinguished colleague Berkley Bedell, who is really responsible for putting this piece of legislation together. I owe him a great debt of gratitude for his leadership.

Without further ado, let's get on. I would stress that all of your testimony will be printed in full in the record. Therefore, I would urge you not to read your statement.

Mr. **Bedell**. Mr. Tauke, did you have anything?

Mr. **Tauke**. I think we would be best served if we began the hearings, Mr. Chairman.

Mr. **Bedell**. Thank you very much.

As I said, our first witnesses are from the Service Station Dealers of America, Mr. Jack Houston, executive director, is here to lead the group.

Do you want to introduce your panel, Mr. Houston, and then proceed as you wish with the testimony?

## PANEL CONSISTING OF SERVICE STATION DEALERS OF AMERICA MEMBERS: STATEMENTS OF JACK W. HOUSTON, EXECUTIVE DIRECTOR, SSDA; THOMAS J. ANDERSON, EXECUTIVE DIRECTOR, PENNSYLVANIA & DELAWARE SERVICE STATION DEALERS ASSOCIATION; ALLEN DALZIEL, SSDA DIRECTOR, IOWA GASOLINE DEALERS ASSOCIATION; JERRY M. FERRARA, EXECUTIVE DIRECTOR, NEW JERSEY GASOLINE RETAILERS ASSOCIATION; MATTHEW TROY, EXECUTIVE DIRECTOR, LONG ISLAND GASOLINE RETAILERS ASSOCIATION; AND JOSEPH J. GRISH, PRESIDENT OF SSDA

### TESTIMONY OF JACK W. HOUSTON, EXECUTIVE DIRECTOR, SSDA

Mr. **Houston**. Thank you, Mr. Chairman. We appreciate the opportunity for being here.

On my right is our president, Joseph Grish, from Detroit, Mich., a dealer.

Next to him is Mr. Jerry Ferrara from New Jersey, one of our affiliates, and he is immediate past chairman of government affairs for about 7 years, so he is well knowledgeable in the field which we are dealing with today.

To his right Matthew Troy from New York, representing the New York affiliate of the Service Station Dealers of America.

On my left from the State of Iowa we have Al Dalziel, representing the affiliate from that State.

Mr. Chairman, it is indeed a pleasure for us to have this opportunity to talk to you and the committee members a few minutes about the content of the Small Business Motor Fuel Marketer Preservation Act. We are speaking on behalf of the 60,000 dealers across the country who are affiliated with members of this association, representing 38 States, the District of Columbia, and Puerto Rico.

We are most pleased to just insert the official testimony into the record as the chairman has requested. And we will attempt to ad lib for a few moments and minimize the amount of time.

I would like to emphasize to the committee that crimes are taking place in the marketing of gasoline in this country and those crimes taking place in the market system are destroying competition in retailing of gasoline and they are destroying small business, the very backbone of the American free enterprise system.

I would ask that the Congress, this committee and later the Congress itself, hand down the verdict that we believe is justified, a verdict in the interest of protecting and preserving competition in the retailing of gasoline for the minimum prices which will be the result from such competition among 100,000 or whatever the final count might be, versus the competition that would exist in a marketplace where only 10 or possibly 20 people sitting in their ivory towers make decisions with regard to retail prices in this country on a product which is no longer simply an item which we like to use; it is an item we have to use. It is an essential product to the American consumer and we must protect to all degrees the competitive elements involved.

We would like to comment first on the adverse effect on the consumer by what is taking place in the marketplace: By the refiners operating retail stations, selling gasoline at retail at a price which is not adequate to cover the cost of the dealer wholesale price which they charge retail dealers and the cost of doing business in the retail marketplace as the question at point. No other net-back or other form of comparison can be a realistic appraisal of what happens in the marketplace.

We must start with the price at which these retailers are being charged for the product in the marketplace and associate that price with the cost of doing business from that point on to provide that product to the consumers of America.

We submit to you that the practices which are being engaged in in this country have in our opinion eliminated substantial numbers of dealers; we won't argue whether it is 80,000 or 100,000, either figure is an excessive amount of small businesses being eliminated from the marketplace. And we submit that the activities taking place in the marketplace are so destructive to competition and the eventual—the reality of having maximum value for the consumer for his fuel dollars at the gasoline pump is at stake.

I would like to comment briefly about the open supply. I believe that that is one of the most important sections of the bill which will bring the greatest amount of increased competition in retailing of gasoline because it will, for the first time, open the door to 140,000, approximately, dealers in the marketplace today to sell gasoline which they will have an option of buying. Under present conditions they have no option. They have in reality sold exclusively the company product, they have paid whatever that company wanted to charge, and they have been locked into the situation where through the various mechanisms of economic pressures and suggestions of their landlord-supplier who have simply infringed upon their business decisions to the point where these dealers have made decisions not in their own best interest and not in the interest of the consumers whom they are trying to serve.

I submit to you that the passage of H.R. 6722, open supply, the rack pricing provision, the divorcement of the major integrated companies from retailing and the locking in of the refiner-sales ratios provision, are reasonable and logical solutions to a very serious problem in the marketplace.

As you know from previously having seen copies of the report on the case for legislative relief from the impending destruction of small business and competition in the gasoline industry, which I coauthored with Dr. Alvine and Mr. Phillips, we recommended a solution which goes far beyond what this bill recommends and would result in upon passage.

Yet the three of us, having spent 6 months or in excess of 6 months in studying all the documents of some 20 years, almost 25 years, and coming up to the current status in the marketplace, believe that the content of your bill is a realistic, a viable, and something that can be done quickly to stop the abusive destruction of competition in retailing gasoline and to stop the elimination of the backbone of America in the free enterprise system.

So we believe that as the authors of the book, we are saying that we believe this bill ought to be passed. Putting my other hat back on as acting executive director of the Service Station Dealers of America, we believe we are reasonable to ask the Congress to deal with the issue and we support the passage of and ask for the passage of H.R. 6722.

There is one last comment I would like to inject before asking our other speakers to make brief remarks. One is in reference to a comment which was made in 1967 as printed in the Federal Trade Commission's report on anticompetitive practices in the marketing of gasoline. And I quote:

> The extensive record before this commission fully demonstrates the need for government action in support of the retail gasoline dealer. As a result of marketing practices on the part of supplies, the retail dealer's position is largely that of an economic serf rather than that of an independent businessman. He has been discriminated against in price, his competitive initiative has been disciplined through such discrimination. He has been coerced into making decisions concerning price and product that are other than his own. The commission is unimpressed by any industry argument that employment of coercion is beneficial because it results in lower prices.

I would like to add to that statement.

Mr. BEDELL. Where did that statement come from?

Mr. HOUSTON. It comes from the Federal Trade Commission's report on anticompetitive practices in marketing of gasoline; this letter transmitted a copy to me July 3, 1967. The report was dated June 1967, I believe.

I would like to add a brief comment to sort of bring that statement that I have just quoted up to date. The statement is that since 1967 when this data was put together we have the increasing takeover by the refiners in the sale of gasoline by their own employee-operated outlets; since 1972, more than 100 percent increase in the volume of gasoline which is being sold by company-operated stations.

We submit that these problems, added to what was already evidenced in this report, justifies the Congress action in 1980 to give us some relief in the marketplace and us—I am talking about myself and others in this country who are consumers, not small business, consumers' interests has to be the overriding consideration. But we as small business are important to the backbone of America's free enterprise system and we, too, deserve some consideration. But as consumers of America we want to preserve competition in retailing of gasoline and we ask for that by the passage of this act.

Mr. Chairman, I would now give you Matthew Troy from New York, with the permission of the chairman, and ask him to be brief in his remarks.

Mr. **Bedell.** Thank you, Mr. Houston. Your written testimony will be made part of the record.

[Mr. Houston's prepared statement follows:]

### PREPARED STATEMENT OF JACK W. HOUSTON, ACTING EXECUTIVE DIRECTOR, ON BEHALF OF THE SERVICE STATION DEALERS OF AMERICA (FORMERLY THE NATIONAL CONGRESS OF PETROLEUM RETAILERS), WASHINGTON, D.C.

Mr. Chairman, my name is Jack W. Houston. Thank you for providing this hearing and the opportunity to present the views of the Service Station Dealers of America (SSDA) which represents 60,000 gasoline retail dealers who are members of our 42 affiliated local dealer associations which are located in 38 states, the District of Columbia and Puerto Rico.

Before I proceed with our testimony, for the record, let me state certain facts that are relative to my qualifications to speak for the nation's gasoline dealers. I have represented the gasoline dealers of Georgia, one of SSDA's largest affiliates, for over 23 years. I have served as their chief spokesman during the past 18 years as Executive Director. During the past eight years, I have chaired the Government Affairs Committee of SSDA. I became Acting Executive Director and chief spokesman for SSDA in December 1979 and I am serving in that position today.

Though I have spent almost half my lifetime in dedicated involvement to solve the problems besetting the small business gasoline retail dealers, it was only recently that I fully recognized just how serious is the plight of these dealers as they struggle to serve the motorists of America.

There are crimes being committed against society as a whole, against consumers of motor fuel generally, and against the small business community in particular in marketing of gasoline in this country. Unless there is relief provided by Congressional action to stop and reverse the trends caused by these crimes, the final curtain will fall on the free enterprise system in marketing gasoline.

Like a cancer, which spreads until it consumes and destroys its victim, the crimes of the unfair marketing practices employed by some refiners and some of their local wholesale distributors (jobbers) will destroy small businesses and competition in the retail marketing of motor fuels. To "wait and see" if destruction becomes more imminent is to risk unreasonably the benefits of competition to consumers from among thousands to just a handful of individuals.

Some refiners are taking over the principal "high volume" potential locations, building up those volumes and forcing the closing of the small locations. The adverse effect of this practice is to (1) reduce the number of local retail dealers conveniently located to meet automotive product and service needs of consumers, and (2) with the decreasing numbers of dealer-operated service stations there is progressive lessening of competition in the retailing of gasoline making it easier for the refiners to coordinate pricing against the public interest.

The evidence is in! It is time to examine the facts and findings. As the supreme jury in this instance, the Congress is respectfully asked to hand down its judgment. We sincerely submit that the evidence before you justifies a STRUCTURAL CHANGE in the marketing of gasoline.

That structural change can best be accomplished with the enactment of H.R. 6722—a bill, when law, provides the opportunity to prosecute those who perpetrate and commit calloused crimes in the marketing of gasoline.

The passage of H.R. 6722 without substantive changes, except to strengthen and clarify its intent, will thwart the last and final move by refiners to "control" oil from the wellhead to the consumers. The destruction of small businesses and competition will cease with the passage of H.R. 6722 and, the public benefits of real competition in the retail marketing of gasoline will be maximized.

With your permission, I would like to make our final argument for passage of this significantly important legislation.

For nearly three decades the legislative and the executive branches of our federal government have responded to petitioning by the Nation's small business gasoline dealers for relief from a position largely that of an economic serf, rather than that of an independent businessman. Such position was, and continues to be, a result of marketing practices on the part of refiners and some of their local jobbers.

In the past the dealers were "whipped" into line or replaced. Today, economic evictions are commonplace. Many locations are now company stores operated by employees of refiners and their jobbers. The passage of the Petroleum Marketing Practices Act of 1978 successfully corrected a portion of the unfair market practice wrongdoing relative to the tenure of relationship etc. Economic eviction has been substituted now for prohibited practices of unfair terminations, notification of termination, and unfair refusals to continue a relationship with a dealer. Annihilation of dealers is in process.

The number of Congressional hearings, and hearings held by the various departments in the executive branch of the government have produced great volumes of data about gasoline marketing practices. All of this activity, though questionable in measurement of the resulting action taken on it, has been vital to discovery of all the facts.

The manhours consumed at taxpayers cost to obtain these facts will have been the greatest waster ever of taxpayer dollars if it is now ignored and we are to continue with just more hearings without making a decision one way or the other. The Congress should decide in 1980 whether it supports the "backbone" of America, small businesses, and the competition it provides among tens of thousands engaged in the retailing of gasoline which benefits accrue to the citizens of this country, or if it supports refiner take-over of the last stage of the oil industry not yet dominated by refiners, so that they control and limit competition in moving oil all the way from the oil fields to the tanks of consumer vehicles. It is difficult to imagine Congress would permit such a monopoly as being in the public interest.

The most recent hearings held during 1979 by the Subcommittee on Antitrust and Restraint of Trade Activities Affecting Small Business updated and enlarged upon earlier documentation on what's been happening in gasoline marketing. We commend the job well done by the Committee and its staff; and, we thank you for bringing us to this hearing point, as you attempt to correct the marketing problems you have found existing in the marketplace which are destroying small businesses and competition in gasoline marketing. We have, therefore, deliberately avoided duplication of testimony and of presenting more of the same documentation about unfair marketing practices of some refiners and some of their jobbers in developing the case for support of H.R. 6722.

The Title III hearings' transcripts contain valuable 1978 and 1979 data, as well as for prior years, about marketing practices that have existed and are continuing to destroy small business and competition. Contrary to the conclusions arrived at by the manipulation of such data and expressed in Part I of the DOE Report to The Congress, which the authors of the report advised this Committee during a hearing on May 8, 1980, that they may change when Part II of the report is written later this year, the data contained in the transcripts and in documents obtained during the Study sustains a charge that refiners and their jobbers have sold gasoline at retail in company stores at retail prices that were not adequate to cover the wholesale prices charged their dealers and the entire cost of operating the retail outlets. The record showed it has been happening . . . and it is currently happening in the marketplace. One has only to examine the data in the individual track record of each refiner (or jobber) who has moved aggressively to integrate into retailing in certain markets to see the real facts that have been obscured by the authors of the Title III Study Report.

The record established during the five years that Congress was considering and enacting the Petroleum Marketing Practices Act of 1978 contains volumes of substantial data about unfair marketing practices of both refiners and their local jobbers. Leaders (and others) of the Congress recognized that the problem existed and directed development of an extensive record with enactment of Title III. Congressional leaders from the House and the Senate emphatically expressed that PMPA only goes part-way in effectively preserving competition in the gasoline industry. Representative Harley Staggers, Chairman, House Committee on Interstate and Foreign Commerce, said (Congressional Record—House, page H3017, April 5, 1977):

"Mr. STAGGERS. We need the continued presence of the independent gasoline marketers who care about the motoring needs of their customers and who will continue to provide important consumer services and price competition."

The interest of Representative Neal Smith, Chairman, House Committee on Small Business, has been shown numerous times by his effort to have the Congress consider much more structural change of the oil industry than the changes contained in H.R. 6722.

Leaders in the Senate have expressed, too, a feeling that only half the job had been done upon passage of PMPA.

A clear pattern does exist when the use of company stores is examined for each refiner. It is this pattern, and its impact on competition, that provides an understanding to the examiner about the deleterious use of the company-operated stations to destroy the dealers.

The use of upstream profits to any degree of measurement at best can be only a temporary advantage to motorists, lower prices, and it is only a temporary deviation from the required applicable principal motive of any corporation—a motive that demands it maximize profits for its stockholders.

An example of refiner pricing at retail outlets is worthy of review and application to a time when the only real competition left in retailing is another refiner employee-operated outlet. A top official of Exxon said "Our primary objective in operating company retail outlets is to make a profit from the retail business." It has been only since the gasoline shortage hit us in 1973 that some refiners began their more aggressive moves to forward integration into retailing by increasing the volumes of strategically located outlets using price to attract consumers away from their dealers. While the overall numbers of outlets for all refiners have not changed substantially, their relocations have; and, they have grown substantially in the average number of gallons sold through such outlets.

During prior years the refiners used their company stores "to police prices" that were charged by dealers. Some were training stations, and they did not originally engage in practices that were extremely detrimental to competition. That is not the case in today's market. The normal forces of the marketplace have become imbalanced by the unfair practices of refiners (and jobbers) who operate company stores.

The economic climate in retailing gasoline with upstream changes in the oil industry have altered what may have been reasonably acceptable practices of "limited" company-operated stations. Using their fewer company stores to meet or to beat competition from private branders, and the common practices of "feathering" discounts off the wholesale prices to help their own dealers meet their lower retail prices in company stores . . . and to meet private brander low pricing . . . enabled the refiners to begin the process of eliminating some competitors from the marketplace. As the number of employee-operated company stores grew (or their volumes increased), and the shortage of product developed, discounts to dealers were discontinued. This left the dealers to competing with their own brand down the street, which was selling gasoline at retail at, near, and sometimes below, the price the same refiner charged its dealers at wholesale. This effectively has shifted sales from dealers to refiners' retail stations increasing the pace at which dealers were eliminated.

Microscopic markets have already had a taste of what's ahead at refiner and reseller-retail stations. In some of these markets where the refiner and reseller-retailers dominate, the independent branded and/or private brand dealer has already been forced out of the market. Retail prices are as high, or higher than, when dealers were in those markets providing services (now not available) along with the product sales. Profit for stockholders is the motive! Lower pricing is a temporary method employed by refiners and their local jobbers to force out the dealers and to pave the way for higher future profits.

Exxon says it is its policy "to price company operated stores at, or above, the prevailing market price of all competitors in each trade area." This statement confirms that Exxon watches the competitor to determine its prices. With only 10 to 20 companies controlling retail, there will be little chance that "competition" will exist. If they "Pied Piper" each other, they will maximize price and profits.

Do not be deceived or be misled by those who advocate lower prices offered by refiner and reseller-retailers as being in the public interest. Look carefully at what happened in Europe as documented by the House Small Business Report (1976). According to that Report:

"The European activities of Exxon also support the dealers' argument that low prices are only temporary. In 1968, Exxon unilaterally lowered its retail price at all its outlets throughout Europe, in some places by as much as 20 percent. This unprecedented action was in response to price wars initiated by independent marketers in various parts of Europe which had resulted in their obtaining an increasing share of the retail market, reaching a high of almost 20 percent in West Germany. Exxon continued this policy for two years, until the position and existence of the independent marketer had been eliminated. Although losses resulting from this action totaled almost a billion dollars in revenues and profits, Exxon and the other integrated oil companies survived, and, at the conclusion of this effort, they all raised their retail price which is, in Europe, no longer seriously subject to price competition from independent marketers."

Do not be deceived by those who claim that refiner and reseller-retailers are more efficient than the local gasoline dealers. With the same starting price and the same volume, the dealers of this nation can best serve consumers! They are more efficient, and the stiff competition they bring to the marketplace assures the lower prices in the long run.

What are the economic realities about gasoline marketing through company stores? The practice of a refiner or reseller selling gasoline at retail at a price that does not cover the wholesale price charged retail dealers by that refiner or reseller, plus all the cost applicable to the operation of the retail outlets, is a practice that is inconsistent with the economic requirements of any business. Minimum rules of fairness are—and always have been—a prerequisite to the American Free Enterprise System if it is to maximize competition.

Do refiners with lessee dealers serve dealer (interest) or their own interest? Every action and every activity of a refiner is to serve its corporate interest. It is only incidental that the dealer may benefit.

Questions the Congress must decide: Is it in the public interest to wipe out the massive network of minor mechanical services availability and substitute something other than auto-related needs for the traveling consumer? Would the absence of full-service dealers in the marketplace help or hurt the consumer? Would it make traveling with confidence more reliable or less reliable? And, what would it do to safety on the highways? Would it endanger us all? What are consumers being deprived of for the advantage of a lower price at company-operated stations? Is the advantage in price expected to remain after small business is forced out of gasoline retailing? Is there evidence available that shows what can be expected?

First, consumers are deprived of the benefits of competition based on the total values of access to, and instant receipt of, essential minor mechanical services and the dedication of small businesses that meet their personal needs versus the corporate inattentiveness and lack of response to their needs. Without the elements of competition at work, after the massive dealer network is substantially removed from the marketplace, there will no longer be any restraint upon retail prices charged by the few refiners, who will control gasoline marketing as they now control all other segments of the oil industry.

Is it in the national interest to allow huge pumpers, spaced miles apart, to displace the network of dealer outlets? Wouldn't consumption go up if consumers had to regularly use a gallon or more of fuel just to get to and from a point of refueling? Wouldn't it create traffic congestion problems as well as require wasteful manhours just for refueling? Wouldn't it lead to higher retail prices after only a few oil companies control retailing as the few who now control wholesale prices have increased their profits by holding to artificially high wholesale prices?

Would gasoline prices of the future rise substantially more with one hundred thousand dealers making their individual decisions to compete for the consumers' fuel dollars, or would prices rise more substantially with only a few, less than ten, or maybe 20 corporate headquarters, making decisions on prices of gasoline?

This bill is a consumer bill! Consumers will be able to exercise their best judgment as to who will be favored by their patronage based on service, ability, and the efficiency of the stiff competition among many competitors rather than to be limited in their selection based only on price—prices that do not include essential fringe benefits of service and convenient accessibility.

A few refiner executives will make decisions to maximize profits—not service and convenience to consumers.

Will government be wrongfully dictating who can, and who can not, engage in the retail marketing of gasoline by requiring a structural change? No! The public interest will be preserved, and must be preserved, as in other instances where laws have been enacted to protect society against the few who would unfairly take advantage of others economically less fortunate who effectively use their abilities, their talents, their skills, their efficiencies, to keep competition alive in the marketplace. Equity is essential and can be assured by balancing the vast powers of refiners and their jobbers to maintain competition in gasoline marketing.

Will this legislation financially affect refiners? Resellers? Exxon said "The Maryland (divorcement) law will not significantly affect Exxon financially." This law, H.R. 6722, will not significantly affect refiners or resellers. But, its passage will significantly and favorably affect the consumers of America.

This legislation will protect dealers from an unfair form of competition. The dealers must continue to face the real and fair competition of other dealers in the marketplace. The dealers will thus be required to be more consumer-oriented, both in price and in services, to survive in the marketplace.

It was because of these questions and concerns about what was happening in the gasoline industry and the effect on consumers that caused the authors of "The Case for Legislative Relief From the Impending Destruction of Small Businesses and Competition in the Gasoline Industry" to conduct a thorough study of all relative public and private documents and write that report. The title was drawn to conform with our findings and conclusions.

By reference I ask that the content of this study be accepted (but not inserted in the transcript of this hearing) as part of my testimony. Copies have been made available to every member of your two Subcommittees, every member of the Congress and extra copies to any staff members who requested it. Additional copies will be furnished gratis to any responsible government official or staffer who is working with this legislation. (As a copyrighted work, copies are available to the public at a nominal fee.)

Without belaboring point by point, we simply submit the content of this Report as our basis for asking the Congress to enact legislation that will stop the destruction of small business and competition in the gasoline industry.

The bills before you, H.R. 6722 and the others, do not go far enough—they are too weak to correct effectively all the practices that are contributing to the elimination of competition and small business in the marketing of gasoline.

As we recommended in the Report, the important elements leading to the destruction of competition and small business in the gasoline industry can not be totally corrected short of a major restructuring by divesting integrated refiners from ownership, and operation of, retail service stations.

To continue to own the property and lease to dealers as well as to be the exclusive supplier of the primary product (gasoline) to that outlet provides the ability, the opportunity, and actually encourages the interference by refiners, in the day-to-day management of the retail outlet. Advice from a company representative is the same as an order. The superior economic partner can, and does, dictate to the dealer with such overriding authority and pressure as to cause the dealer to make decisions neither in his customer's best interest nor in his own best interest.

The imposition of economic rents is an excellent example that refiners, if permitted to own the property and also be the exclusive supplier of gasoline, can "whip" dealers into cooperating, who are unresponsive to company advice by imposing a higher rent. If a refiner wants to sell more gasoline it insists upon compliance with lease provision about hours of operation and many other provisions of a lease which are many times not enforced on the "cooperating" dealer. Any increase in sales is beneficial to the refiner because the refiner does not incur any cost. Yet, the lessee dealer may lose 20-40-50 or even 60 percent of his net profit by operating the extended hours.

Counseling by refiner representatives becomes an order to a dealer who fears loss of his livelihood if he does not follow the counselor's advice.

A clean-cut structural change in gasoline marketing by divesting the integrated refiners from ownership and operation of retail outlets will absolutely remove the mechanism utilized by refiners who influence decisions of dealers. It will make the dealers more responsive to the public interest and needs. It will provide the best value in products and services at the lowest price. It will permit the availability of such services to exist in the marketplace. Divorcement of the integrated refiners is only a partial remedy.

Yet, Mr. Chairman, the Service Station Dealers of America want to assure you that H.R. 6722 in its present form will be a big help toward bringing minimum rules of fairness and a welcomed partial relief. It will allow dealers to remain in the marketplace. If dealers are allowed to remain under the lesser relief provisions of H.R. 6722, we will prove to the Congress and to consumers that we are more efficient and that we will provide consumers the maximum benefits of having real competition in the marketing of gasoline.

The divorcement provisions and the other provisions of H.R. 6722 represent minimum protection that is essential, but they do not necessarily produce clear and absolute solutions to serious marketing problems that are destroying competition and small businesses. For example, some independent refiners and small refiners as defined in H.R. 6722 are in fact economic giants to retail dealers. An exemption from an across-the-board divestiture or divorcement provision for those integrated refiners processing less than 15,000 barrels per day or producing less than 10 percent of their average refinery input should be substituted rather than use the sales ratio approach. Also, the present special (discounted) price to jobbers if continued with divorcement of jobbers from the operation of retail outlets may provide more absolute relief from unfair practices and improve competition than the change to rack pricing.

Nevertheless, the Service Station Dealers of America will appreciate the cleaning up of some of the unfair practices that will result from passage and enforcement of H.R. 6722 as written.

At this point it seems appropriate to discuss our views about pertinent questions that can be raised about the bill as now worded—and, to offer, where appropriate, suggested changes.

If Sec. 3.(a)(2) is not appropriately worded so that a dealer occupying a motor fuel service station owned by a refiner and subleased to the dealer has the right of first refusal of an offer made by the refiner to sell such interest, we urge that the wording be altered to give the dealer the right of first refusal. We believe the language is adequate as is and would ask that the Committee report clarify this intention. A leaseholder, other than a dealer, should be entitled to exercise a right of second refusal of an offer made by the refiner to sell such interest upon the failure of the dealer occupying a motor fuel service station to exercise the right of first refusal.

To encourage dealers who choose to go into business in market areas predominately supplied by jobbers rather than refiners, it would seem desirable to extend the SBA Loan guarantees to apply to any person acquiring a motor fuel service station from a refiner or a distributor of a refiner. Otherwise, access to funding will continue to circumvent dealer ownership in a substantial portion of the country. This would permit and encourage jobbers to exercise greater influence over retailing of gasoline and thereby defeat the intent of the bill to make individual dealer ownership possible in such market areas.

The right of first refusal should be extended to all dealers who sell motor fuel of a refiner or a distributor of a refiner's trademarked product. This would provide equal opportunity for individual ownership throughout America. It would assure greater competition in the public interest.

There are two serious issues that deserve relief by the insertion of a subsection after subsection (d)(2) on page 7 after line 2 [and relettering of (e) and (f) as (f) and (g)]. First, the use of economic rents to evict dealers and/or to destroy the profitability of a dealer by a refiner who decides to close a facility or; second, a jobber who wishes to force a dealer out so he may operate the retail outlet should not be permitted. Some structural change to least interfere in this area of relationship of a dealer to a refiner or to any other person who is both landlord and supplier for a refiner's product should be provided. We would suggest the following:

"(e) Refiners may not charge a dealer an unreasonable rent for the use of property engaged in the distribution of motor fuel."

The term "unreasonable" should be included in definitions. We suggest the following language: The term "unreasonable" includes (but is not limited by) any rental which would yield a greater return to the refiner on such property in which the station is located than that of comparable property utilized for the sale of motor fuel, and any rental which precludes a dealer from realizing a fair return on the sale of motor fuel from such location. It shall be relevant in determining a fairness for an appropriate past period of time to consider rents by dealers operating service stations in the appropriate trading area in which such service station is located.

We offer our comments to the question if there is any obligation of a refiner to sell gasoline to a dealer who leases from other than a refiner or one who owns his own property. Certainly, a dealer who has entered an agreement with a jobber to lease a station owned or controlled by that jobber is required under H.R. 6722 as is the dealer who leases from a refiner, to sell at least 50 percent of his gross volume of sales of gasoline which has been purchased from the landlord/supplier. Any other product which is otherwise offered for sale to other than regular customers of a refiner or refiner's jobber must be accessible to all dealers on equal or similar terms and conditions when purchased in like amounts.

Dealers who lease and purchase product from a jobber should not be locked out from purchasing, storing, and selling gasoline of the same brand, or of another brand, if such product is offered by a refiner or other source of supply for a lower price than the price charged by his landlord/supplier.

Sec. 3(c)(1) appropriately provides protection from arbitrary charges being loaded on branded dealers for the right to sell under a trademark, to benefit from the use of the refiner's credit card, or to benefit from advertising and promotion. This is a very important provision and must remain in the bill to institute the structural change in today's marketing which has contributed to the inability of dealers to compete on price. Dealers have had no choice but to compete on a non-price, service basis because the dealer wholesale price system is structured by refiners to emphasize service and other non-price methods of competition.

We suggest consideration be given to the following changes: Sec. 3.(c)(1) should be changed to (c)(1)(i). The second sentence on page 5 beginning on line 24 should be amended to read as follows:

"A refiner shall be considered to have violated the provisions of this paragraph in any case in which the refiner withholds some *or all* of the refiner's available motor fuel from any sale, at a point of transfer of the motor fuel from the refiner to purchasers of the motor fuel, and subsequently sells such motor fuel at motor fuel service stations operated by the refiner at prices below the prices at which, if the refiner would have had to sell such motor fuel at such stations in order to obtain the same profits on the sale." (Additional words italicize.)

Sec. 3.(c)(1)(ii): "Notwithstanding any other provision of law and except as provided in Paragraphs (2) and (3), it shall be unlawful for any refiner to refuse to sell or delay delivery in selling any motor fuel to a dealer at any time at any point of transfer unless the refiner is prevented or impeded in the timely delivery of such motor fuel by circumstances outside of the refiner's control or has good cause to believe that a dealer will not pay for such delivery on terms equally applicable to other purchasers."

Paragraph 12 on page 12 beginning at line 11 should be amended as follows: "The term 'operate' means, when used in connection with a motor fuel service station, to engage at such station in the business of selling motor fuel at retail through any employee, commissioned agent, *person operating a service station or stations pursuant to a contract with a refiner (except for a dealer as set forth herein), or person acting on behalf of the refiner or under the refiner's supervision whose duties include the sale of such motor fuel.*" (Additional words italicize.)

At the conclusion of the substantive provisions, a statement to the effect that the act shall not preclude the enactment of any state law which seeks to deal with this subject in greater detail. The following language is proposed: "Provided further that nothing in this Bill shall prevent any law with regard to the subject matter of this Bill which seeks to regulate that subject matter in any manner not in direct conflict with the provisions of this Bill."

Unrestraintive application of the Robinson-Patman Act provision that requires manufacturers to provide various discounts, rebates, credit allowances, etc., to their customers so long as the same offer is made to all customers is essential to a truly competitive society. It justifies the structural change to require rack pricing. Anyone, dealer or jobber, moving product from a refiner's point of distribution incurs the same types of cost to any point downstream. Efficiencies and good management in a truly competitive climate will then be the ingredients that will determine what price the consumer must pay.

The open supply section (d)(2) of the proposed bill is an essential ingredient to bring reasonable competition to what otherwise has been, for all practical purposes, an exclusive dealing arrangement for dealers who lease from a refiner or a refiner's local jobber. When a small businessman must call his supplier and order product and *pay* what that supplier chooses to charge, public interest is ignored! Under this proposed structural change, consumers will be assured of competitive prices. Refiners and their distributors will of necessity, if they wish to maintain their share of the market, be cognizant of other sources of supply available to a dealer under the open supply provision and take action accordingly to reasonably meet such lower product prices to encourage their dealer network to sell the branded product exclusively or almost exclusively.

The refiner sales ratio which opens up presently sealed retail marketing avenues will encourage the growth of the independents and small refiners, while, at the same time, it will bring real competition to gasoline marketing never before possible. The public interest will be served.

Requirements for properly identifying to the public that the product being sold is not that of the trademark displayed on the premises is welcomed. During recent, and even current short supply circumstances we have seen this type practice in the marketplace. Some refiners have officially advised their dealers what is expected of them should they find it necessary to sell another product on the premises. One company has given written authority to its wholesale distributors to substitute another product and to sell under the trademark as if manufactured or supplied by that company. We support protection of the public by full disclosure when a dealer purchases, stores and sells other than the trademarked product at an otherwise branded retail outlet.

The requirements imposed by the proposed bill for refiners and for others, (e)(1)(2)(3), are essential for the Commission to properly monitor and to immediately enforce the provisions of the proposed bill. Such data is vital to protect the public interest which this bill will successfully accomplish if enacted and enforced.

Mr. Chairman, this concludes our formal statement. If there are questions I will gladly respond; or with your permission, ask one of these gentlemen with me to respond.

With me to assist in responding to your questions, if you will permit, are Joseph Grish, President of the Service Station Dealers of America (SSDA), a 17-year Marathon dealer (Detroit); Jerry Cohen, SSDA legal counselor; Thomas Anderson, Executive Director of the Pennsylvania and Delaware Dealers Associations, and Vice Chairman of SSDA's Government Affairs Committee; and Jerry Ferrara, Executive Director of the New Jersey Gasoline Dealers Association, the immediate past Co-Chairman of SSDA's Government Affairs Committee.

Mr. Chairman, two representatives from the home states of the Chairmen were invited to sit with us during our presentation. We ask that you permit each of them to make a brief statement on behalf of their respective organizations and to respond to any questions. They are, Matthew Troy, Executive Director of the Long Island Gasoline Retailers Association, representing the New York State Association of Service Stations; and Al Dalziel, a SSDA Director of the Iowa Gasoline Dealers Associations.

Should there be any questions raised that would need clarification as it relates to our national position, we would appreciate an opportunity to respond.

Also, Mr. Chairman, we would appreciate responding to questions relative to our testimony prior to your hearing from either Mr. Troy or Mr. Dalziel.

We appreciate being allowed this opportunity to express our views on H.R. 6722 and to urge the prompt passage of this essential legislative relief which is necessary to stop the destruction of small business and the elimination of competition in the gasoline industry.

Thank you.

## TESTIMONY OF MATTHEW TROY, EXECUTIVE DIRECTOR, LONG ISLAND GASOLINE RETAILERS ASSOCIATION

Mr. TROY. Thank you, Mr. Chairman.

Thank you, Jack.

Mr. Chairman, I have submitted a prepared statement and I would just like to briefly summarize it for the members of the committee and the staff.

First of all, my interpremise is based upon the fact that the oil companies do control every segment of the petroleum industry with the one exception, that is the retail sales of the gasoline. They control the other three segments so completely and so thoroughly that it is impossible for competition to exist within that structure and therefore they are able to control whatever prices they want to charge for the refining, if they agree to refine any outside oil; for the transportation of it if they agree to transport any of it, of the refined crude or the raw crude.

The important part is for those people who think this is just a problem for independent dealers. It is not. If that were the case and I was a legislator, I would not worry in any way about whether independent dealers are losing their jobs alone, that is not my prime concern. My prime concern would be to represent my consuming public constituents.

If this were a situation where we were talking about a staple product such as milk, for example, if you had a situation where the dairy companies or seven or eight dairy companies of this country controlled everything that was done with milk with the exception of selling it, and they were in the process of trying to take over all your small dairy stores throughout the country, stop and go dairies where they just sell milk or other products, there would be such a hue and cry in this country you would not be able to in any way defend such action.

We wonder why we are being treated differently because in some areas of the country, particularly Long Island, we do not have mass transit, milk is no more stable than gasoline is for us, because if we can't get to our jobs we can't buy the milk to sustain our family. We can't get to our jobs without gasoline.

We have a problem with respect to this, in the sense that everybody seems to equate gasoline as a luxury, you take it for a pleasure drive. We don't equate it that way. Our work force in Long Island would not be able to get to the defense factories in Republic, Grumman, to the centers on Long Island. They would not be able to do anything with respect to travel because our Long Island Railroad leaves much to be desired.

The problem that we have is every time we raise an issue with respect to the gasoline market, subsidization, the oil companies come in and say, "I do not know what they are getting excited about, we don't subsidize, but even if we subsidize, what is the difference?"

We heard Mr. Lane yesterday give you a definition of competition that was unbelievable. I think you pinpointed it perfectly when you pinpointed it on him and said that he did not understand what his job was about. My problem is when we get to a legislative forum, the oil companies come in and say, we sell our gasoline cheaper at the company-ops than do the independents. Therefore, why are you legislating us out of business? How can you go back to your constituents, you are voting something out of existence where the gasoline is sold at a cheaper price.

That is true. But the main question is asked by you so many times that they are unable to answer it any more. That is why you are selling it at a cheaper rate? How are you able to do it? You know the answer as well as I do, you have said it off that forum, subsidization right down the line, they can afford to compete with us unfairly because they can write off things we can't write off at the level we operate.

The important issue is that you have asked this question, it is in the record, part of a congressional record now that I hope every Congressman and Congresswoman reads because it is an important aspect of it.

I want to point out in closing one situation that I point out in my statement to you gentlemen, and to you ladies, that is that Exxon Corp. has a financial report for 1979 that, by whoever wrote it, I imagine after it becomes knowledgeable to you people, will probably be fired because he did not even cover up as well as they usually cover up things. What he did is pointed out very, very clearly and very, very openly the profit margin Exxon made on the European market. All you have to do is go back to 1968 as you have done and see in the reports of some of your other subcommittees where Exxon controls the European market because they drove the independent marketer out of business.

In 1 year Exxon went from $500 million up to $1.5 billion. They made a $1 billion increase in 1 year in the European market because they knocked us out of business and could charge the price they want to charge.

I just wanted to state to you that I play the horses, I know some gentlemen and ladies on the panel might play it; if you want to see what the horses are going to do in the future you look to the past performance chart. You don't need the Morning Telegraph to tell you what Exxon and every other corporation would do if you give them the complete monopoly that they are trying to get right now in the petroleum market. They will do exactly what they have done in the past, turn around and milk the American public the way they have and drive us out of business and, as a result, the consuming public will suffer.

Mr. BEDELL. Thank you.

I understand you have a prepared statement that will be made part of the hearing record. The attached pamphlet will also be made part of the record. (See appendix B.)

[Mr. Troy's prepared statement follows:]

### PREPARED STATEMENT OF MATTHEW TROY, LONG ISLAND GASOLINE RETAILERS ASSOCIATION, INC., JERICHO, N.Y.

My name is Matt Troy and I am the Executive Director of the Long Island Gasoline Retailers Association, representing in excess of 1300 independent gasoline station dealers of Long Island, State of New York.

In preparing this statement, I was aware that other speakers would spell out, in detail, the pros and cons of this legislation, so I tried to think of something that I could say that would fortify the position of those Subcommittee Members who favor this legislation, change the minds of those who oppose it and convince those Members that are still undecided.

Try as I may, I could not come up with anything that would adequately dramatize the need and the importance of this legislation, from the viewpoint of the consuming public and the independent gasoline station dealer.

Therefore I thought that I might draw an analogy of what would take place in another industry if that industry operated under the same business practices that confront our industry and the consuming public that we serve every day.

It is a matter of record that a few major oil companies control every aspect of the oil industry, except the retail sale of gasoline. (The major oil companies control 93 percent of the oil industry's production facilities; they control over 90 percent of the pipelines and the ocean going tankers that transport the crude oil and the finished product and these same oil companies control 81 of the 131 refining companies in the United States today.)

Furthermore, in a concerted effort to take over the retail gasoline sales market, in just 7 years, these major oil companies have increased their share of the amount of gasoline sold at retail outlets, by 13.11 percent. (Through their company operated facilities, they increased their share of this market from 12.67 percent to 25.78 percent.)

Thus it is evident that the major oil companies are now in the process of successfully monopolizing the last and only aspect of the oil industry that they do not presently monopolize.

So much for the basic facts for I would now like to draw an analogy to the situation that we in the gasoline sales market face daily, by comparing our industry to the dairy industry.

Suppose that seven or eight major dairy companies controlled 93 percent of the cows and the grazing lands here in the United States, and suppose that these same companies controlled over 90 percent of the trucks, railroad tanker cars and pipelines that were used to transport the milk after it was taken from the cow, and after it was processed.

Suppose further that these very same companies owned or controlled 81 of the 131 milk processing plants in this country.

Now to carry this analogy to its conclusion, suppose that in the past 7 years, these same dairy companies have increased the number of gallons of milk that they sold through company owned retail dairy outlets by 13.11 percent, while driving 57,008 independent retail dairy store owners out of business.

If that happened in the dairy industry there would be such a hue and cry from every consumer in America that Congress would act immediately to break up this monopoly and to protect the small, independent dairy retailer.

Why are we being treated differently for we face the exact same factual situation in our industry?

Some Members of Congress may think that my analogy is not applicable here and that I'm mixing oranges and apples, because milk is a staple of life, whereas gasoline is not.

I would like to invite those Members of Congress who feel this way to come to Long Island, where the car is an absolute necessity of life given the mass transit system that we have and I am sure that this is true in every other rural and surburban area in America.

As Legislators I am sure that certain oil companies are telling you that if you vote for retail divorcement you will force them to close down their company operated facilities and that these facilities are a benefit to the consuming public because they sell gasoline for less than the independent dealer.

Please do not be misled by this claim, for it is a half-truth being perpetrated by the oil companies to save their skin.

Congressman Bedell's subcommittee hearings did disclose that company operated facilities do sell gasoline for less than the independent dealer, and they do this by subsidizing these outlets with profits that are earned in the production, refining and transporting of the crude oil and the refined product.

The one question that the oil companies never seem to be able to answer is "Why do you subsidize your company operated facilities when they are in direct competition with your own branded independent dealers?"

If they answered that question fully and truthfully they would have to admit their complicity in the successful campaign in Europe in 1968, wherein, led by the Exxon Corporation, they drove almost every independent dealer out of business.

In that campaign, the oil companies unilaterally subsidized their company operated facilities to a point where they were able to drop their retail price by almost 20 percent all across Europe, and thus drive every independent dealer out of business who could not drop his price to meet this unfair competition. (Just as soon as the market was monopolized, prices at company operated facilities were raised dramatically, and profits reached the obscene level quickly.)

I am a horseplayer and when I want to know what a horse will do in future races, I look to past performances. I urge you Members of these two Subcommittees to look to the past performance charts of the oil companies, with particular emphasis on the Exxon Corporation and their European efforts in 1968.

One need only refer to the 1979 oil company profit and loss statements to see what happens if you permit them to completely monopolize the oil industry, as they do in Europe.

Attached to my statement today is a page from the Exxon Corporation, 1979 Annual Report (page 14) which shows that in 1970, Exxon earned $103 million in the United States market and $187 million on the foreign market.

Then, in 1978, the United States market earnings reached $294 million, while they earned $563 million on the foreign market.

During 1979, Exxon earned $108 million in the United States market, reflecting a drop in earnings of $186 million from the 1978 figure, but they earned $1.504 billion on the foreign market, which represented an increase of $941 million over 1978 figures.

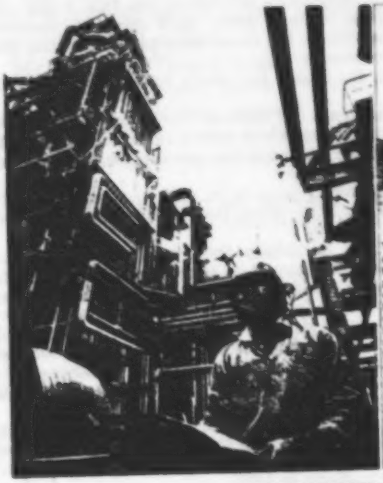
Doesn't this show you what will happen if you permit the oil companies to monopolize the oil industry here in the United States as they do on the foreign markets, with particular emphasis on Europe?

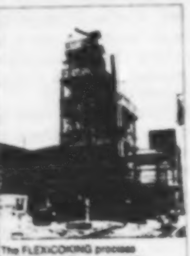
By their own statement they have indicted themselves.

We need retail divorcement here in the United States and we need it now.

I have thus concluded my oral statement, but to fortify same I would like to present to each member of the two subcommittees a pamphlet that the New York State Service Station Association has prepared on retail divorcement. It will give you the background data of just what is taking place and has taken place in the oil industry.

Thank you.





The FLEXICOKING process developed by Exxon converts heavy petroleum stocks to light products and synthetic gas, which are in greater demand. Early work on the process involved a pilot facility at Baton Rouge, Louisiana (above), which started up in 1973. The first commercial installation, under an Exxon license, was made at the Toa Oil Company refinery in Kawasaki, Japan, where field operator Yui Tato checks readings.

| 1970 | | [illegible] | [illegible] |
|---|---|---|---|
| | | millions of dollars | |
| | **Earnings from operations** | | |
| 103 | United States | 284 | [illegible] |
| 187 | Foreign | [illegible] | [illegible] |
| 290 | Total | 657 | [illegible] |
| | **Average capital employed** | | |
| 2,372 | United States | [illegible] | [illegible] |
| 5,058 | Foreign | [illegible] | [illegible] |
| 7,430 | Total | [illegible] | [illegible] |
| | **Capital expenditures** | | |
| 315 | United States | 271 | [illegible] |
| 577 | Foreign | [illegible] | [illegible] |
| 892 | Total | [illegible] | [illegible] |
| | **Research and development costs** | | |
| 33 | | [illegible] | 71 |
| | **Return on average capital employed** | percent | |
| 4.3 | United States | [illegible] | [illegible] |
| 3.7 | Foreign | [illegible] | [illegible] |
| 3.9 | Total | [illegible] | [illegible] |
| | | thousands of barrels daily | |
| | **Petroleum product sales** | | |
| 1,753 | United States | [illegible] | [illegible] |
| 3,931 | Foreign | [illegible] | [illegible] |
| 5,684 | Total | [illegible] | [illegible] |
| | **Refinery crude oil runs** | | |
| 989 | United States | [illegible] | [illegible] |
| 4,281 | Foreign | [illegible] | [illegible] |
| 5,270 | Total | [illegible] | [illegible] |

## Refining and Marketing

Exxon's worldwide refinery runs were at high levels as the year began. They were soon constrained by the limited availability of crude oil supplies and for the year as a whole were down slightly. Petroleum product sales were unusually strong during the first two months of the year, due in part to colder than normal weather. They declined thereafter, as allocation measures were instituted in many markets, and overall were also slightly down for the year.

Earnings declined in the United States, as prices for major products did not keep pace with rising raw material and operating costs. There was a rapid increase in the cost of imported crude oil, including a substantial increase in mid-December retroactive to November 1. In addition, the company took special measures to meet customers' needs in a period of supply shortage, such as the purchase of substantial volumes of finished products and semi-finished feedstocks. The added costs resulting from these measures were not fully recovered in the market.

During the early part of the year, reduced crude oil supplies made it impossible for Exxon USA to meet strong demand for its products, and the company had to begin allocating product deliveries in March. Over the rest of the year, demand for Exxon products remained strong, requiring continued allocation of most products. By using significant quantities of purchased feedstocks and running conversion units at high rates at its refineries, Exxon USA was able to manufacture relatively higher volumes of gasoline and other light products for which demand was strongest. Overall, the company delivered to U.S. markets about 96 percent of the total volume of petroleum products delivered in the previous year. Throughout the year, the company exercised a policy of price restraint and

What about gasoline?

Mr. **Houston**. Before our next speaker, I would like to make known to the record that Thomas Anderson, who is from the State of Pennsylvania, representing Pennsylvania and Delaware, an affiliate of Service Station Dealers of America, also a vice chairman of the Government Affairs Committee, a very knowledgeable person, has joined us at the table.

Now we would ask Mr. Dalziel from the State of Iowa to make brief remarks.

## TESTIMONY OF ALLEN DALZIEL, SSDA DIRECTOR, IOWA GASOLINE DEALERS ASSOCIATION

Mr. **Dalziel**. I am one of the statistics which we have been talking about all through the legislative process in trying to get some relief from the major oil companies. I have one of those two-bay service stations with under 50,000 gallons a month sales that does gross business of less than three-quarters of a million dollars a year.

My station supports not only my wife and two children but also four other full-time employees and five part-time people. In effect it is buying four houses and putting five people through college. With a payroll of over $80,000 on sales of less than three-quarters of a million dollars, I feel you have to consider this an efficient way of doing business. I doubt that many of the major industries can do more with less.

Two years ago I had enough confidence in my own ability and that of the economy to buy my own station. I have invested in excess of $120,000 and feel very confident that things are going to work out well. Of late my bank is having some concerns. Every time a station goes out of business, every time greater market share reports come out, they show our segment of the market is losing, he gets a little more nervous. He has shared these concerns with the SBA, they also are a little nervous.

In my particular location, we do not offer self-service, we have full service only. That is not saying that that is the best way to market gasoline. It is saying that it is the best way at my location.

Mr. **Scheuer**. Could you elaborate? What is different about your location? Why wouldn't you want to offer people the option of saving a couple of cents a gallon?

Mr. **Dalziel**. Because I have been able to build a successful business without it and I just don't feel that it is necessary, as long as my business continues to grow and prosper without offering self-service, I feel there is a large enough segment of the population that wants full service that I have no reason to change my business practices.

Mr. **Bedell**. But you have no argument that there are some people who prefer self-service and some people would prefer full service?

Mr. **Dalziel**. Absolutely.

Mr. **Bedell**. You are catering to those that prefer full service?

Mr. **Dalziel**. Right, which brings up my next point. That is, I would like very much to feel that my customers in my community will dictate the policies that I have. As soon as full service becomes overpriced or unpopular, then I can move to self-service or I can move to groceries, doughnuts, bicycles, whatever it takes to market gasoline, and I can hire the people to collect the money just as well as I can hire mechanics. I can do it just as efficiently and just as well as any major marketer can.

I have not chosen to move in that direction at this time. As the market changes, I will change with it, the difference being that the way I market the product should be determined by my customers and not by my supplier and not by the Government. It should be the consumer that has the ultimate say-so in how the product is taken to market.

Mr. SCHEUER. Can I ask a question?

Let's say you are selling full service and there is a guy across the street who is selling self-service—is his profit per gallon of gas as much as yours?

Mr. DALZIEL. That is difficult to answer because it depends on who the supplier is. In one case I have a major branded lessee station on one corner across the street and his profit is considerably less. He has split island service, both full service and self-service.

Mr. SCHEUER. Let's say on his split island service, does he make as much per gallon of gas on the self-service as he makes on the full service, or less?

Mr. DALZIEL. Absolutely.

Mr. SCHEUER. He is making less?

Mr. DALZIEL. Considerably less.

Mr. SCHEUER. So he is passing on to the customer the labor that he is saving plus a little of the profit too?

Mr. DALZIEL. Absolutely. And the——

Mr. SCHEUER. Why wouldn't you want to have a split island, let us say, and charge the same price for gas and just charge for the full service what it costs you to provide the full service? You give the customer the benefit of having the option of paying a little bit less—equal to the amount of what it costs you to provide the service.

Mr. DALZIEL. This is——

Mr. SCHEUER. It would be a net wash to you and the customer would get your labor saving for the self-service island?

Mr. DALZIEL. This is a personal business decision and I do not feel that at my operation I could make significant savings in labor to offset the cost of dropping the price of the gasoline, because I do not have a high volume station. I need my employees there for other duties anyway. So there would be in my particular case no significant labor savings.

Mr. SCHEUER. You have answered the question very well.

Mr. DALZIEL. OK.

In the recent past, the last 6 or 8 months, almost 50 percent of all the gasoline sold at my station has been bought from someone other than my supplier because of low allocations. My supply contract does allow me to purchase gasoline on the outside and I have been using that option. Had that not been available to me I would have been literally out of business. So the open buying program does work; it is efficient and is effective. It does help, believe me.

Several years ago it became very apparent that marketing concepts were changing drastically. When Citgo, Gulf, Shell, and more recently Texaco, pulled out of the Iowa market it was extremely obvious that the marketing of gasoline was going to become much more intense, much more difficult than it had been in the past because competition was lessening at a great degree.

Now we were very concerned about this and we went to the major oil companies and to various Government agencies and the oil companies told us that this was merely a shifting of—internal shifting of the companies and had nothing to do with the overall marketing programs and that their closing of stations and putting dealers out of business was a matter of economics, that during the fifties and sixties that they had drastically overbuilt. There was literally a service station on every corner, most corners having three or four. Because they had overbuilt, now was the time to close them down and get back to a more normal number of stations.

At the same time, we also noticed that even though the number of stations was decreasing, our gallonage was not increasing. We went to the State and the State tax showed that the number of gallons being sold in the State was increasing also. So there is more gas being sold, major branded dealers were selling less. So the theory the oil companies were selling more product through fewer stations was not true.

The gas had to be going somewhere. We looked around and found the convenience stores popping up literally everywhere. We did a head count, found this was true, they had very high gallonage; I am talking about 1975 through the present time. Prior to that time, there were no convenience stores.

Mr. SCHEUER. Convenience stores?

Mr. DALZIEL. Like 7-Eleven, Quick Trip.

Mr. SCHEUER. They are selling gas?

Mr. DALZIEL. Yes.

Mr. SCHEUER. Is that a low-volume operation?

Mr. DALZIEL. High-volume operation.

Mr. SCHEUER. High-volume?

Mr. DALZIEL. Yes; one in Iowa was called Casey's, not in existence before 1975, is now No. 1 marketer. They move more gasoline than any other marketer in the State of Iowa and were not in existence prior to 1975. They are supplied by everybody, short-term contract by majors, small refiners.

Mr. SCHEUER. It is nonbranded?

Mr. DALZIEL. It is branded as Casey's, similar to 7-Eleven or Quick Trip.

Mr. SCHEUER. They buy it from everybody?

Mr. DALZIEL. From anybody and everybody. They buy the major oil companies, with major oil company allocations. At the same time these stations were being closed down we also noticed that there are more company operations coming into being, both by the larger jobbers which were buying up some—when the four major suppliers pulled out these stations were vacant, some of the large jobbers were buying up these units and jobber-operating them or company-operating them, as well as the major oil companies such as Conoco were converting Conoco stations over to Western or other secondary brands.

Now we had been very—really very concerned about this. So we put our survey I guess you would say, in the form of a map which shows very conclusively that the oil companies did not overbuild, that they are merely in fact changing the marketplace. This is a little small to show but I will give it to the Chair if you like and you can look at it at your leisure.

The gold stars here are the service stations closed or out of business operated by service station dealers. These are the vendors that have taken over the marketplace and these in fact are in the exact same sites and locations where dealers that have been put out of business were located, and these are the company operations, again on the exact same sites and locations where dealers were put out of business.

This shows in Cedar Rapids, Iowa, a town of 120,000 people, 59 dealers have been put out of business, 16 convenience stores have been put into place, and 22 company operations. Out of that 59 stations, 38 of them have been replaced by convenience stores and company operations. That does not necessarily show that they overbuilt.

Mr. SCHEUER. What percentage of those convenience stores would have split island service?

Mr. DALZIEL. They offer self-service only.

Mr. SCHEUER. Only self-service?

Mr. DALZIEL. Self-service only.

Mr. SCHEUER. What percentage of the company operations would have a split island?

Mr. DALZIEL. None; they are self-service only.

Mr. SCHEUER. I see. Well, apparently these convenience stores are very popular.

Mr. DALZIEL. Yes, they are.

Mr. SCHEUER. They do a big business?

Mr. DALZIEL. Yes; their price is considerably less, 10 to 15 cents a gallon less than what the major suppliers are.

What the dealers of Iowa are asking for is not for protection, we are asking for freedom, we are asking for the freedom to be able to give the public what the public wants and what the public needs in automotive fuel.

Mr. SCHEUER. You do not offer a split island, you do not offer self-service?

Mr. DALZIEL. Right.

Mr. SCHEUER. You give very good reasons why you don't, because you won't have the labor savings, because you need your employees to do other things. But in the case of the convenience stores, the company operations, they do offer self-service; you don't?

Mr. DALZIEL. Right.

Mr. SCHEUER. Apparently there is a considerable public that wants something different than what you are offering. They want a self-service operation, you see.

Mr. DALZIEL. Yes.

Mr. SCHEUER. Why shouldn't the public have some options?

Mr. DALZIEL. The public does have options. I have no quarrel with that option. I am saying that if the public demand is so great at my unit that they want self-service from me, I will be glad to go that route.

Mr. SCHEUER. No, you might have to go out of business first, because you have a low-volume operation and you can't afford to let labor go because, as you very properly said, you need your labor to do other things. I could very well understand that it would be uneconomic for a low-volume operation to offer self-service and to give the kind of price reductions that the convenience stores and the company-operated stations offer. In other words, for them it would be economic to give a reduction that would cause you bankruptcy.

Mr. **Dalziel.** No, excuse me, sir, but that is not true. There is nothing to prevent me, if I chose, I could change my entire business operation. I could put in bread, milk and beer and let mechanics go and go self-service and continue in the gas marketing industry. I have the ability to change with the market as the market dictates. Right now my market at my location is very strong, I have no reason to do that. But I do not need to try to continue my business as it is at present. I can change.

That concludes my remarks.

Mr. **Scheuer.** I just want to make sure that the public has the full spectrum of options. They want full service with a mechanic: They go to you. They want to get the savings of a split island: They can go a block or two away. I just want to make sure that the public gets the benefit of competition and the options that are available so that what anybody wants anybody can have. The public can go to you, to the convenience store, or to the company operation across the street and get the split island.

Mr. **Houston.** If I may respond to Mr. Scheuer's comments there: The fact that the convenience store has taken on gasoline is not necessarily an efficiency and competitive factor that brought it on. It is the change in marketing strategy. And the strategy includes designating many of the convenience stores as jobbers and giving them 4 to 6 cents break in the price they pay compared to the price that Al pays. And this is the reason they are high volume, not because of efficiency and labor savings and all the other factors of providing service to consumers, but merely an advantage in the marketplace.

Mr. **Scheuer.** Do they get that 5 or 6 cents or 4 to 6 cents price advantage over Al from the fact that they just had a label stuck on them?

Mr. **Houston.** Just because of label.

Mr. **Scheuer.** Or does it come because they have a graduated scale of prices and if they meet thus and such a volume, they get thus and such a price and at their volume they get a price 4 to 6 cents cheaper than Al's price?

Mr. **Houston.** The dealer who sells 20,000 gallons a month and the one who sells 120,000 or 220,000 pays the same price. So we have to assume that the convenience stores are equally treated according to the Robinson-Patman Act. Therefore, the only way to make the differential in price would be to grant them a different label as you call it, I think that is the correct way to say it; they are labeled as a jobber, when in fact they are not jobbers or they are handling gasoline under a commission arrangement and are the real retailer in that sense, and the stores operating in Atlanta, Ga. in heavy numbers are controlled by the company itself, not the convenience food stores and the convenience food stores only serve as a collector of the money from the consumer.

There are various techniques being used for new marketing strategy. The strategy also includes the convenience stores using gasoline as a loss leader to attract customers in which they pay higher prices for items on the shelf for other goods.

I personally have done surveys on that type of operation and I can tell you that it makes a difference in whether the convenience store has gasoline or does not have it. That is another element which is involved.

But the main point, Mr. Chairman, and I will appreciate this to just put this into the record: Consumers will dictate whether Al or other dealers will go into only self-service or full service. What we have now is refiners dictating what the consumer is going to get. I think that is the element where you see competition in retailing being destroyed by an act of the refiner and not by the decision of the consumer, whether or not he wants or desires a certain kind of marketing.

Mr. **Scheuer**. The act of the refiner is this label he puts on him of jobber?

Mr. **Houston**. Of that type of operation and the refiner himself engaging in an operation in which he fails to cover the cost—using oost as the price he charges his retail customers at wholesale and the cost of doing business in a retail market, simply do not cover that cost.

Having not covered their cost, they are able to sell at a price lower than the dealers to whom they sell and they can destroy that competition and eventually, with the motive of a corporation being for profit for its owners, will produce higher profits to that refiner in the future by taking over the market.

Mr. **Bedell**. Thank you, Mr. Houston.

I should recognize we have the chairman of the Interstate and Foreign Commerce Committee, Mr. Staggers, with us.

We appreciate your being here, Mr. Staggers.

Mr. **Staggers**. Thank you.

I would like to make one or two comments.

I have before me a bill similar to yours, in fact, it is identical word-for-word, which I introduced years ago. I have introduced this measure each year for the past several years, Mr. Bedell, in an effort to try to help the independent gas dealers of America.

My bill this year is identified as H.R. 7034. Your bill is H.R. 6722. But they are identical, word-for-word. As I said, I have introduced this bill for years. Also, I would like to point out that I have been a gasoline dealer in past years. Before the war I owned a gas station and operated it for 5 years. During the war I leased it out for 5 or 6 years.

I know something about the gasoline operation. And I know that the distributors can favor any independent dealer they wish. They can cut prices, and they can make just as much money as another independent man who may be located just up the street. I know this to be true, because I had this experience happen to me, not once but many times.

Every once in a while they would want to cut the price across the railroad tracks, they would cut it 2 or 3 or 4 cents but I could not cut mine because our company would not allow it. They could get theirs in carload lots, which would help; we couldn't get it because we were across the railroad. As a result, this would practically drive us out of business until we could bring the price back. This is unfair competition, I can tell you from personal experience.

I would just say that I hope the bill does pass, and I will do everything I can to see that it does. I am for the bill and will do everything that I can to help the gasoline dealers.

When the measure gets to the full committee, we will certainly try to get it reported favorably to the House.

Mr. **Bedell**. Thank you, Mr. Staggers.

Mr. **Scheuer**. May I say a word. I want to state for the record, and I should have interruped my Chairman, but I didn't. I want to state that he was so committed to this bill and so involved in it and so persuaded of its usefulness to the American people that he ordered me—he put it in the form of a polite request in writing—he ordered me to so rearrange the already very heavy schedule of my subcommittee, at whatever cost, to get this bill on fast and to cooperate with Chairman Bedell, to arrange these joint hearings; and whatever had to be shoved aside must be shoved aside.

I appreciate the polite tone of the chairman's letter, but I construed that as a letter from on high. We made those arrangements and shoved a few things off the schedule, so here we are today.

I should have interrupted my chairman when he made those remarks. The reason that we have those hearings in such an expeditious fashion is because I caught the signal.

Mr. Houston, we do not want to cut you short.

Mr. **Houston**. We concluded our remarks and would submit to questions at this time. All of us would respond, or one, individually.

Mr. **Bedell**. We appreciate that very much.

Mr. Scheuer?

Mr. **Scheuer**. I would like to clarify in my own mind the definition of the jobber label. It seems to have a very pregnant potential for gross unfairness. How do the distributing companies decide who gets a jobber label and who does not?

Mr. **Houston**. I do not think there is a matter of record as to how they make their decision. It is a matter of record though that there are certain chains of independents who buy under a jobber price who are really retailers only and only have a few retail outlets but are designated as a jobber.

Mr. **Scheuer**. Why wouldn't Al get that jobber designation.

Mr. **Houston**. I am sure he would prefer to have that designation but no supplier would be willing to give him that designation.

Mr. **Scheuer**. Why can't he get it? He is a nice looking fellow. Why should some other guy get it and Al not get it?

Mr. **Houston**. I do not think the other guy should get it. I think all retailers ought to be able to buy at the same price at the rack. In this instance the bill would provide for that. I think the cost of moving gasoline from that distribution point to the consumer is the same no matter who buys it, so why should there be a difference in the price at the rack?

Mr. **Scheuer**. Maybe there should be a difference based on cost of doing business, but an arbitrary 6 cents a gallon difference is a big wallop. I would like to see either a justification for the price

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differential or an explanation as to who gets it, and who doesn't get it.

Mr. **Bedell**. Would the gentleman yield?

I think it is 4 cents rather than 6 cents.

Mr. **Houston**. Four to 6 cents.

Mr. **Scheuer**. Four to 6 cents is what they said. Anyway, even 4 cents is a tremendous competitive advantage. I can see all kinds of traffic crashes in a heavily traveled highway with a 4-cent differential. People would commit mayhem for that, in my congressional district at least.

I want to know what is the criterion that those distributors use in withholding it from and giving it to someone else?

Mr. **Houston**. Mr. Chairman, if I may respond to that.

That is very well put; there is no explanation for it, it is very similar to at one point in history where there is no longer a discounting in the marketplace or temporary allowances by the refiners, there were 48 zones in the city of Atlanta by Shell Oil Co. I visually saw this in their office and they told me that is what those zones on the map were, where one dealer received a lower price than another dealer.

That is a question of discretion on the refiner's side, the same discretion made in it would permit him to designate a jobber, he would decide whether he would get the label of jobber or whether he would not. There is absolutely no criteria that I know of in which they have used that uniformly across the country.

Mr. **Anderson**. Mr. Scheuer, quite frankly, we have been told or I have been told, a group of us have been told——

Mr. **Scheuer**. A group of you what?

Mr. **Anderson**. Have been told that one of the problems that the major oil companies would have with us, if this type of legislation would pass, would be that we would wind up a gigantic jobber and they are probably correct, I am not going to deny that.

Mr. **Bedell**. Who would be a gigantic jobber?

Mr. **Anderson**. The dealers, we would from our own jobbership and be able to buy our gasoline from whomever was charging the lowest price.

Mr. **Scheuer**. What is wrong with that?

Mr. **Anderson**. Not a thing. We are not complaining about that at all. The other people coming after us may. Quite frankly, that is one of our intentions. But who do you think is going to make the money on that deal? We are not going to make any more money because I quite frankly state, emphatically, there has always been and will always be as long as we have independent dealers on the street, fierce competition at the retail level.

However, there is not any competition at the wholesale level. That is exactly where our problem emanates from. We pay whatever price our supplier wants to charge us and you can either take it or leave it. If you want to sell gas, you pay it; if you don't want to sell gas, forget about it. If you don't sell gas before very long you are not going to be on that corner either.

What we are saying is that the consumer in the long run is going to be the only beneficiary of this type of legislation, because if we buy cheaper we are going to sell cheaper, if we have to pay more money, we have to sell it for more money. That is quite obvious. So what we want, quite frankly, one of the things we really want in this legislation is, we want to force some competition at the wholesale level for the first time in its history.

Mr. SCHEUER. But you don't want to give up the benefits to the consumer of competition at the retail level either, do you?

Mr. HOUSTON. Absolutely not, absolutely not. We want to make sure that the consumer does have the benefit of the competition at the retail level. He can't get any of those benefits because it does not exist at the wholesale level. Once you put competition at the wholesale level, then you are going to have the benefits trickle all the way down the line.

Mr. SCHEUER. That is very interesting.

Mr. BEDELL. Mr. Staggers, did you have any questions?

Mr. STAGGERS. I have no questions.

Mr. BEDELL. Mr. Tauke?

Mr. TAUKE. Thank you, Mr. Chairman.

I am sorry that I missed the hearing yesterday. I was unable to attend.

Mr. BEDELL. I was sorry you missed it also.

Mr. TAUKE. I understand it was quite interesting, and in reviewing the FTC testimony I noticed that the FTC representative said that perhaps what we needed was open supply and rack pricing without the divorcement provision.

I am forced to comment on that suggestion by noting that if we would provide open supply and rack pricing, we would offer a great incentive to the major oil company that owned and leased out the gasoline station to take over the operation of that gasoline station to insure that his gasoline would be sold through that outlet. That is why it is essential that we combine divorcement with these other provisions.

And I think it suggests, Mr. Chairman, the lack of insight that the executive branch has offered generally in this whole area. It also occurred to me that while we have defined the relationship between the major company and the independent dealer in a way with which I am pleased, we have not addressed the relationship between the jobber and the dealer in instances where jobbers own the stations.

In fact, what we have done so far is that we have provided open supply and rack pricing for the jobbers. It seems to me that we are encouraging the jobbers who own their stations to force out all the dealers and operate those stations themselves. Consequently, this is the area that I want to take my few minutes to talk about this morning.

First of all, I wonder if you could tell me if you have any thoughts, after looking at this legislation, about what the proper relationship should be between a jobber who owns his or her own stations and the dealer who would lease the stations from a jobber.

Mr. HOUSTON. I have.

I have great concern with the rack pricing provision for the very reason that you have expressed for that relationship.

I am somewhat fearful that the relationship could lead to the elimination of jobber retail dealers, that relationship by the rack pricing, and for that reason I expressed some concern in my written testimony for a type of divorcement jobbers from the retailing, and that was primarily why I had raised that question.

However, the personal contacts I have had with hundreds of jobbers, not only in my State but across the Nation, indicates to me that most jobbers are engaged in the activity of operating retail stations today as a defensive measure against refinery employee operated stations, and they say they cannot operate as efficiently as the dealer can operate and they would prefer to have dealers in those stations.

That leads me to believe that fair rentals will be involved in relationship between jobbers and dealers, and that fairer relationships will be developed because of the need for the dealer and to bill the jobber's volume of business, and that basically is how I would have to relate to that.

Mr. **Tauke**. Suppose I am the good guy oil company operating in Cedar Rapids, Iowa, and I have 30 stations that I own; 15 of them are now operated by jobber employees and 15 are independently operated.

If we go to rack pricing and open supply, I guess I would assume I don't want somebody else's gasoline. The only way I will be assured that my gas will be sold in the good guy's oil station is to make sure I operate those stations and get rid of the independent dealer, and it occurs to me that we need to address that problem.

Your suggestion, I take it, is divorcement, that no jobbers could own any retail outlets.

Mr. **Houston**. Not own but operate retail outlets, and it is for that reason I was suggesting that was a better method perhaps to do it. I still believe that there is the element involved in the rack pricing process that will assure the continuation of dealers operating under the jobbers, because I do not believe jobbers can operate as efficiently and, No. 2, if jobbers cannot operate as efficiently, they will not retain their share of the market by their own company-operated stations.

They will have to have the dealer in order to build the volume, and I am one who is for real competition. If a jobber can in fact buy at the same price or a dealer buys at the same price from the rack and the same distribution point and the jobber becomes in effect a retailer more so than a jobber, he is not getting any advantage in price because of the title now.

Then if he is more efficient in his ability to operate the 30 stations, the public interest would probably be served.

Mr. **Bedell**. Would the gentleman yield?

Mr. **Tauke**. Yes.

Mr. **Bedell**. In searching for answers to this difficult problem, would there be any legitimacy to giving the jobber the choice, that he could either divorce himself from operating any stations or he would have to go to the rack pricing where he had to pay the same for the gasoline as anybody else.

That would give him, it would seem to me, the choice of either being a jobber, distributor, where he was not competing directly in the retail marketplace or he could compete on equal terms. That may be a good or bad suggestion.

Mr. **Houston**. I have not thought this through, but my first impression is there would be nothing wrong with the exercise of that option; you would have an advantage in the job of selecting to become divorced from retailing, those retail dealers under him could expect reasonable rental charges for the use of the properties in order for their survival, because they had made that choice to stay with dealers.

On the other side is, of course, the rack pricing; if the jobber becomes in effect a massive retailer and he cannot efficiently compete in the marketplace with independent retail dealers, then he will lose volume.

Mr. **SCHEUER**. If he becomes a massive retailer, that means he is competing.

Mr. **HOUSTON**. If he is not able to meet the competition of other dealers, who are independent dealers who are more efficient because they are a 1- or 2-man operation versus 30-station operation, and the impersonal relationship with consumers and all the other factors which relate to the success of a dealer on a given corner, I think that is the important element. What is here is a dealer on a given corner serving the needs of the dealer in that community.

His community wishes to buy a product or he would not be selling it in a full service capacity providing the services with it. If that community dictated that it was not going to buy from him, he would have the choice as owner of the property to convert over, go self-serve, food store, or whatever is necessary to stay in business, or he would have to go out of business.

Mr. **FERRARA**. The gasoline retailers of America thank Mr. Staggers for that consideration.

Mr. **BEDELL**. I commend the subcommittee chairman for reading the letter properly.

Mr. Tauke?

Mr. **TAUKE**. Mr. Chairman, I did have additional questions.

Getting back to this relationship between the jobber and the dealer, it occurs to me that if the subcommittee reached the conclusion that it was not politically feasible to have small refiners divorce themselves from their stations, it is even less feasible to suggest that independent jobbers who have struggled in competition with the major companies and, as you said, have protected themselves by acquiring a few stations do the same. It is less likely that we are going to pass legislation which says that now they have to give up the operation of those stations or watch gasoline from some other company flow through them.

I am not trying to be difficult, but it seems to me we have a very major issue here and I haven't figured out how to work this out. The dealers have to give some additional thought to this relationship.

Mr. **HOUSTON**. If I may, Mr. Chairman, I heartily agree with what you are saying, and I am concerned that you may misconstrue my suggestions in my printed testimony, as well as my comments here.

There is a utopia solution to our problems in our opinion. The divorcement in the relationship of jobbers may be that utopia solution, but the political realities of that is something we must deal with.

It is not reachable, in my opinion. There is an element that is involved and I, therefore, as representing the Service Station Dealers of America, we concede that we accept what may be a second best solution but one which will accomplish substantially, if not maybe totally in the long run, the relief we are seeking, but it is a viable recommendation to deal with it in the sense in which H.R. 6722 is dealing with it, and I believe it is an acceptable format which everyone would be best served, consumers, the jobbers, the retailers, and the companies.

Mr. **Tauke**. Mr. Chairman, I would like to direct a couple of questions to Mr. Dalziel. You have talked about your open supply situation. You are a branded station, correct?

Mr. **Dalziel**. That is true.

Mr. **Tauke**. Does Sun Oil require you to make minimum purchases?

Mr. **Dalziel**. Yes, 8,000 gallons.

Mr. **Tauke**. You must purchase 8,000 gallons a month?

Mr. **Dalziel**. No; that is per delivery, not per month, but per delivery.

Mr. **Tauke**. Well, I suppose that you would find that this month you could get much cheaper gasoline from Phillips. Can you go over to Phillips and buy?

Mr. **Dalziel**. No; my supply contract allows me only to purchase products from someone other than Sun only in the case where they cannot supply. If they can supply, irregardless of the price, I must buy from Sun.

Mr. **Tauke**. Do you think there is some merit in looking at that kind of relationship for jobber-owned stations; that if a jobber has five stations that the operator of those stations, the independent operator, could buy on open supply only if the jobber couldn't supply him?

In other words, should we permit some kind of minimum purchase requirement? How does that strike you?

Mr. **Dalziel**. I would have to really have time to think about that. I am not really sure what the effect would be, Tom.

Mr. **Tauke**. Let me ask you this: How does your credit situation work? Does Sun Oil allow you to use the DX credit cards for the gasoline that is purchased from someone else?

Mr. **Dalziel**. They have been very negotiable on that point to this time; they have not presented problems on that.

Mr. **Tauke**. When we get into open supply provisions, it appears that the credit issue is going to be a problem, particularly again from the jobber's standpoint.

Would you concur that that is an issue we have got to look at?

Mr. **Dalziel**. Yes; there will certainly have to be some relationships made on credit policies, absolutely.

Mr. **Tauke**. Mr. Chairman, I just raise some issues. I don't think I have gotten any answers. I should say I haven't found solutions, but I think it is important that we look at these problems as we progress with the bill.

Thank you.

Mr. **Bedell**. Thank you. We are extremely short of time, but I would have one question I would like to bring up.

Mr. Ferrara, you are from New Jersey?

Mr. **Ferrara**. True.

Mr. **Bedell**. It is our understanding that Mobil Oil has recently canceled the lease with one of the New Jersey dealers because he was selling gasohol. Is that correct?

Mr. **Ferrara**. In fact I have the letter of cancellation with me. Mobil originally made public a policy, if you made their round pumps square they were going to furnish you with a kit that perhaps you would be permitted to sell gasohol.

They have not made any kits available and even though this particular station had debranded the pump, it is very specific in their cancellation that because he put another product other than theirs, and particularly gasohol, that they wish to cancel at the termination date of the lease, and that is an area where open supply of this bill would give the dealer independents permission to sell gasohol or any other fuel that proves to be a boon to us not being married or strapped by OPEC, the advantage of selling to the American public, but it is apparent the majors don't intend to do that.

Mr. **Bedell**. The American public would be absolutely furious. We have a situation where we are so heavily dependent upon OPEC and where Mobil puts ads constantly in the newspaper telling us how great they are and how things ought to be different. Then Mobil takes this independent dealer who wants to sell gasohol to help extend our gasoline supplies and they cancel his lease.

It seems to me we better look at who is in charge in America when we see that sort of situation.

Mr. **Ferrara**. Absolutely; I would hope this committee would look into it even further yet, because as to this situation they intend to make this a test case. They claim they got proprietary interest in their tanks and pumps, and I don't know whether the American public has a proprietary interest in getting a product that makes us truly independent.

Mr. **Bedell**. If it were to come to the place where they were to control our retail gasoline marketing, we may as well kiss off any efforts to try to get substitutes or gasohol in distribution.

Mr. **Ferrara**. Absolutely, unless they can form themselves an OPEC in the alcohol industry, I don't think they are really interested in fostering any synthetic fuels, particularly gasohol.

Mr. **Bedell**. Is Mobil one of the companies coming before us?

Mr. **Rosenberg**. They have not requested to testify.

Mr. **Bedell**. I can understand why they would not have requested.

Mr. **Ferrara**. I would like the opportunity to put this cancellation notice in the record of the committee hearing, if I may.

Mr. **Bedell**. Without objection; it will be done.

[The information follows:]

April 24, 1980.

Mr. Herbert Staretz,
*Shurebrook Parkway,*
*Livingston, N.J.*

Dear Mr. Staretz: Please take notice that Mobil Oil Corporation hereby elects to non-renew and does hereby terminate our Retail Dealer Contract and Service Station Lease dated December 8, 1978, together with our Equipment Loan Agreement dated April 10, 1979, and to non-renew its franchise relationship with you. Our franchise agreements and relationship will terminate on the 31st day of July 1980.

The reasons for this termination and non-renewal of the franchise agreements and the franchise relationship are as follows:

1. You have utilized, and continue to utilize, Mobil equipment for the sale of a non-Mobil product. This violates Paragraph 7(d) of the Service Station Lease, Paragraph 6 of the Retail Dealer Contract, and Paragraph 2 of the Equipment Loan Agreement. The obligation imposed by these contractual provisions, to which you agree to comply, is both a reasonable and materially significant provision to our franchise relationship.

2. You have sold, and continue to sell, to the motoring public, a non-Mobil product (gasohol) through a Mobil round pump, which is a trademark of Mobil Oil Corporation. The round pump is a distinctive symbol or trademark which stands for Mobil product. This act not only violates Paragraph 6 of the Retail Dealer Contract, but also constitutes an infringement of our trademark.

3. You have sold, and continue to sell, to the motoring public, a non-Mobil product (gasohol) through Mobil's round pump, which is a trademark of Mobil Oil Corporation. This constitutes a deceptive trade practice in violation of the Federal Trade Act (15 U.S.C. 45).

4. You have sold, and continue to sell, to the motoring public, a non-Mobil product (gasohol) without sufficient notice to the public that this commodity is not a Mobil product. This action violates New Jersey's Consumer Fraud Act (N.J.S.A. 56:8–8.1 et seq.).

5. Each of the acts set forth in Paragraph Nos. 2, 3, and 4 constitute a knowing failure to comply with Federal and State laws, and/or regulations relevant to the operation of the marketing premises.

Enclosed herewith is a copy of the Summary Statement of Title 1 of the Petroleum Marketing Practices Act.

Please vacate the premises and surrender the keys and all Mobil property to us on or before the above-stated termination date.

Very truly yours,

D. L. Eastman,
*District Manager.*

Mr. **Bedell.** We want to thank you very much for your testimony. It has taken a little longer than we hoped.

Mr. **Houston.** I would like to commend Mr. Staggers for the unselfish statement which he has made before this committee in the interest of the American public, and also in his ability to forgive some people for a very poor decision, in my opinion, a man who has proven himself over the years interested in small business, and I have great concern about what he has expressed and I will be looking into it as time goes on.

Mr. **Bedell.** We appreciate all of you for coming here.

Our next set of witnesses will be from the Independent Refiners Association of America.

Mr. Jack C. Pester, from Des Moines, Iowa, is the chairman of that group and, Mr. Pester, if you want to bring the rest of your group forward we would ask that you introduce the members.

Mr. Pester, we would request that you introduce the other members of your group and I notice that your statement is some 20 pages.

If you possibly could summarize it, it will save us a great deal of time.

## PANEL CONSISTING OF INDEPENDENT REFINERS ASSOCIATION OF AMERICA MEMBERS: JACK C. PESTER, PESTER REFINING CO., DES MOINES, IOWA; WILLIAM J. THOMAS, ROCK ISLAND REFINING CORP., INDIANAPOLIS, IND.; THOMAS M. DOWER, VICKERS PETROLEUM CORP., WICHITA, KANS.; EVAN EVANS, UNITED REFINING CO., WARREN, PA.

### TESTIMONY OF JACK C. PESTER, PESTER REFINING CO., DES MOINES, IOWA

Mr. **Pester**. I am Jack Pester, president of the Independent Refiners Association of America.

I am also chairman of the board of Pester Corp., which is an independent refiner with a refinery in the State of Kansas.

To my left, I have Mr. Bill Thomas, vice president of the Rock Island Refining Corp., in Indianapolis.

To my right is Mr. Tom Dower, vice president of Vickers Petroleum Corp., of Wichita, Kans., and Evan Evans, vice president of United Refining Co., a Pennsylvania based refinery.

We have submitted our statement, as the chairman has mentioned, and I will try to remain brief.

I will give the statement for the whole group and then we will open ourselves to questions to all of the members of the hearing panel here.

To begin with, the Independent Refiners Association of America has 35 independent small and/or small refiners.

They have a total of about 1.7 million barrels a day refining capacity, which means that they have slightly under 10 percent of the refining capacity in the United States.

To summarize our statement, I must begin by saying that we are opposed to this legislation for several reasons which I will give.

I think the most important reason is that it would limit us in pursuing a cause that we find necessary for our survival.

To begin, I think I must state that almost all independent refining companies are crude-deficient. That means that we must go to the open market or to our major integrated competitors, and must buy our crude oil subject to the whims of the spot market, or to the whims of the majors and whether they are going to sell to us this month or not.

I think that actually the real investigative focus of Government should be on the freedom of crude access, and the freedom of equal prices throughout the petroleum industry, and that would cure a tremendous amount of problems.

I will try to explain one of the basic reasons for our objection to the bill.

When you are dependent on somebody else for your crude supply and subject to the whims of a rapidly escalating crude oil price, you do not have the ability to constantly make your crude oil supplies flow into your refinery.

So, many times, we are in a situation where we must go out and make the determination that, yes, for each barrel we can pay $1 or a $1.50—and it has gone up to $5 from time to time—more than our competitors.

When this happens, even though our refinery is as modern and efficient as most of theirs, the worst thing that can happen to us is not to have dependability at the other end of the integrated line.

You will find that many, many independent refiners originally went to direct operated service stations so that they knew that when they ran a barrel of crude oil and refined a barrel of gasoline that there was a hole for it, because a refinery is something that you just can't operate like a yoyo, up and down.

We have labor contracts; we have commitments for crude oil that many times are made 60 days, 90 days, or 6 months, or a year in advance; and so it became necessary to know that we had a marketplace, because we were not able to do what the major oil companies could do.

We were not able to maintain, through a franchise system and through national credit cards, thousands of low-volume retail outlets to maintain that assured supply.

In dealing with the specific aspects of the State-by-State sales ratio that is in the bill, there are several things that I would like to mention that would be particularly burdensome.

The State-by-State ratio creates this type of problem: If we are in a given metropolitan market—let's say Kansas City, where on one side of the State line is Kansas City, Mo., and on the other side is Kansas City, Kans., Overland Park, and that tremendously large area—a State-by-State ratio might mean that we could be drastically affected by the shifts of population across State lines. We might not be able to really pursue a market in which we have been perhaps for years and in which we feel that we have some basic position.

We might not be able to maintain that market position.

Another good example might be in the quad cities in my own State of Iowa, with Davenport, and Bettendorf comprising half the population on one side, and Rock Island, Moline, and the other towns on the other side.

I see that as a definite problem.

Also, it would mean limited flexibility at a time when we have a tremendous rearranging of petroleum supply throughout the country—it was mentioned earlier by the gentleman from Cedar Rapids that four major oil company suppliers pulled out of the State of Iowa.

If we are locked into a State-by-State ratio, we would have more difficulty trying to fulfill the needs of a market that might basically be economically really feasible for us. We could be limited, or capped as far as growth, in that market to only wholesale, which is not a way that a company such as mine is used to operating.

We also have problems with the 1978 base year. In 1979 our company alone acquired additional properties. It has bought additional properties. None of these properties were acquired by canceling dealers. None of these properties created that type of situation at all. These are normal growths that our company expected to have.

Now, some of those properties were bought before we saw the Iranian embargo last year, and we have had to consistently buy very expensive land to put in a land bank, to develop in the next 2 or 3 years as it becomes financially feasible, so the base year creates a problem.

I think it also creates a problem for new entrants. Let me tell you a little bit about my background. I, too, was a service station dealer. I owned in 1958 my first service station in Grinnel, Iowa, and was a service station dealer and I built several more.

As time went by, I became a jobber distributing to independent dealers. There came a time in my career that the Internal Revenue Service consignment regulations—saying that an oil jobber consigning petroleum products to independent dealers had to deem them as employees—put me into a double taxation situation where I would be paying taxes on income that dealers had gotten through commissions. So one day in 1972 or 1973, we called all our dealers into a room and we told them what our problem was.

We told them that we were going to make them eligible for all of the company benefits and we would like to have them become service station managers for us, and 100 percent of them signed lease cancellations and 100 percent became company employees.

As a matter of fact, our turnover turned over the other way, so I understand all of these things. We then became what is known as a direct operating jobber, chain retailer. In 1975, we acquired a refiner and we continued to operate service stations.

My question is, how would you treat somebody doing what you should be able to do in this country—starting out as a small business and becoming a larger business. How would you treat that individual under that base year, and how would you treat him under the State-by-State approach?

Another thing you might find quite interesting, our company buys substantial amounts of gasoline from other refiners. Some of that relationship is locked in because of the Emergency Petroleum Allocation Act.

How would you treat us on the gasoline that we buy and have been buying over the last few years from other refiners to supply service stations that we had previously owned?

It would be something that would have to be addressed. If all of a sudden we increased the size of a refinery and our ratio was such, there would be no way. We would have no choice but to close down service stations the way the bill is presently written.

Another feature of the bill that should be commented on, to keep things more uniform in the whole regulatory scenario, is that the definition of an "independent refiner" should be consistent with the EPAA standard. Otherwise, you are always constantly mixing apples and apples and ending up with apples and oranges.

I think Federal preemption should be provided for by any such bill, because if you have a State-by-State ratio or any type of ratio, State actions could really mix and foul this whole thing up.

To comment on the rack pricing provision, it wouldn't cause any problems for Pester. The only problem I can see for the gentleman from Cedar Rapids, if he came to Pester to buy gasoline, it might be twofold: As to the Federal energy regulations, he won't have an allocation with us, that is one; and, two, he might be subject to our credit manager's determination of terms.

So I don't think that many independents have a lot of problems with the concept of rack pricing. One characteristic of most of the independent refiner companies is that we do sell by rack prices. However, it would be difficult to support the provision because it is unclear and probably not workable in its present form. That would be our decision concerning that.

As to open supply, it probably would not cause a problem for Pester, but it would cause problems for many of our other members, and we think the provisions are unclear, IRAA members frankly have not agreed upon a position on that particular issue.

In conclusion, we hope that Congress does not undercut competition in its effort to assist some competitors.

I would like to turn myself and my comrades over to answer any questions that we can.

Thank you.

Mr. Bedell. Thank you very much, Mr. Pester. Your prepared statement will be entered into the record. [See appendix C, exhibit 1.]

Mr. Staggers, do you have some questions?

Mr. Staggers. One question, if I might.

You mentioned that you had gone into business in the 1950's. I bought my filling station in 1936.

I personally managed it for 5 years and after that I leased it while I was in the service, so I think you are a Johnny-come-lately.

Nevertheless, I would like to know what you propose to solve this problem.

You know there is a problem at the retail level. There is a doubt always in every retailer's mind. What are your recommendations?

Mr. Pester. Mr. Chairman, first I think if we could get out of petroleum regulations, not the price regulations, the allocation regulations, we could really see what might happen in the marketplace. I honestly think that in many cases the dealer would become a more valued customer of the oil company rather than a governmental location number.

I think that would help a great deal.

Second, if, in my opinion, there is a root to this problem, it is in crude oil.

You know, when you have one refiner in the country paying $5 a barrel more than another refiner in the marketplace, that creates as much as a 10- to 12-cent differential in the selling cost to that refiner's customers. Gasoline comes from crude oil. I think that is where a lot of the root of the problem lies.

Mr. Staggers. Yes, but how are you going to solve that?

This is not alleviating the anxiety of those independent dealers at all by saying we have got to solve that.

I have said to the President several times, both publicly and privately, to cut off every gallon of oil from the OPEC nations now. Then we would live within our means and we would know what we are paying in this country.

That ought to be done now. Nevertheless, the problem is with us and we must try to solve it. I would like for you to come up with some specifics as to what we can do to protect the independent dealers inasmuch as you have been one.

Mr. Pester. I think you need to create a competitive situation without all its restraints. What happens when you get into the situation we have today is that a customer does not become valuable. He becomes another monthly obligation that you have to supply and that makes the difference.

I used to be president of the National Oil Jobbers Council and attended conventions all over the country, and they used to have nice hospitality rooms with cocktails and hors d'oeuvres and used to take the customers out to dinner, and they did that because they wanted their business.

One of the interesting things is a notable absence of hospitality rooms in conventions. They don't have to. Your customers are attached to you.

Mr. STAGGERS. That doesn't bring competition. What I am saying is if you have a solution to protect the independent dealers who are small and they depend on their station for their livelihood and their families, tell us.

All retailers cannot get to be jobbers and refiners, you know that.

Mr. PESTER. I know that.

Mr. STAGGERS. They can work all their lives and there isn't room for them. You are one of the fortunate men, so we are trying to help them and trying to solve the problem.

I would like to have some suggestion or a recommended solution as to how we can help them remain in business and not have the anxiety for their families and their livelihoods.

You are an able and intelligent man we look to you for a solution.

Mr. PESTER. It would help to straighten out the crude oil problem in the country. Take off the regulations, and that would have the greatest possible effect in helping the dealers.

Mr. STAGGERS. We are trying to reach for something now in order to be helpful to these men and, as I say, to their families and those who have to work.

Mr. PESTER. I am not sure that putting another mandate on the problem and another restraint for the market to do some things is an answer either.

Mr. STAGGERS. Yes, sir.

Mr. PESTER. The problem is deep. I have a great deal of compassion for them.

Mr. STAGGERS. I can agree with you on that, but we are trying to solve their problem right now, and we hope we don't create another one for you. That is the important thing.

I was very much interested in looking through Mr. Houston's statement; back on page 7 he quotes me from the Congressional Record back in 1977, and I am very flattered that he did so. It says that:

> Congressional leaders from the House and the Senate emphatically expressed that PMPA only goes part way in effectively preserving competition in the gasoline industry. Representative Harley Staggers, Chairman, House Committee on Interstate and Foreign Commerce, said (Congressionnal Record, p. H3017, Apr. 5, 1977):
>
> "Mr. STAGGERS. We need the continued presence of the independent gasoline marketers who care about the motoring needs of their customers and who will continue to provide important consumer services and price competition."

I said that back in 1977 and I believe it just as much today as I did then. We need it, and we need somebody who has some independence, who can compete in the marketplace. They just can't compete against those who are so much larger and have so much more money and affluence than they do.

We need that independent dealer; we need them on our street corners, in our different places all over America, and that is what we are trying to do is protect them, and we need your help.

Yes, sir?

Mr. **Pester.** I would be glad to discuss it with you further, sir.

Mr. **Staggers.** That is all, Mr. Chairman.

Mr. **Bedell.** Thank you, Mr. Staggers.

You indicated that there is not that same interest today in trying to have the receptions and cocktail parties, because they don't need the business so badly. Maybe we could get Mobil to agree to sell gasohol and we could take that alcohol from those cocktail parties and use it for a better purpose.

Mr. Tauke?

Mr. **Tauke.** The points you made, the four points on the State-by-State ratio, the base year, the ratio for the purchase of gasoline, and the EPAA definition are all points that I think have considerable merit, and we should look at them as we attempt to finalize this legislation.

I would like to spend just a moment addressing the general philosophical position, I think, that you and the organization takes.

I think one of the reasons that this committee is getting into this business is because of our concern that in 1981 when regulations do expire that we have a problem.

Now, I have to tell you that I favor deregulation of crude oil and deregulation of gasoline. Generally, the energy industry needs deregulation. But when we have certain oil companies that are saying that we don't want independent marketers and we want to market our gasoline primarily through company-owned stations, then you know that when the regulations expire you are going to have a situation where the small independent dealer is not going to be supplied.

Besides that, there seems to be something inherently unfair about asking an independent dealer to compete with the same person who is supplying that independent dealer, just as it seems inherently unfair to you to say that you as an independent refiner should have to compete with the same person who is supplying you with your crude oil. That is why we are getting into the divorcement business.

I don't know exactly what you want us to do about the crude oil—if you want us to prevent refiners from getting crude oil or from being in the crude oil business and the refining business at the same time, or if you want Federal regulations which guarantee your supply of crude oil.

If you could answer that question, then maybe you could also answer the question of what we do about those independent dealers who are competing with the people who supply them.

Any observations?

Mr. **Pester.** May I have Mr. Evans answer that?

Mr. **Evans.** I think, Congressman Tauke, that the independent refiners generally are entrepreneurs. They are in a capital intensive segment of a capital intensive industry.

The most efficient is an integrated operation. However, there has been abuse, particularly on the crude oil side of this integration, including subsidy downstream of crude oil production profits with many tax benefits inherent in them.

What we have proposed all along is freedom of entry at each level, with each component of the petroleum industry not restricted to one level or another. We don't believe the divorcement in any segment is in the interest of the American consumer.

We think free entry at any point is in the interest of the American consumer, along with free transfer of value within an operation, but no subsidies, I think that perhaps the example of United Refining would give you a different view.

Mr. Pester has described his personal circumstances, how he progressed from dealer to refiner.

United Refining has been in existence since 1902. We have been marketing gasoline since early in the 1920's.

At the present time we sell less than one-half of 1 percent of the gasoline sold in the United States.

We sell through dealers, through company-operated stations, self-service, company-owned vendors, any way that the consuming public wants it, and we have found that a good dealer in one of our branded stations is worth his weight in gold.

We have also found that a high volume company-operated station generates a lot of profits too. We sell gasohol and we are a complete operation on the refining market side.

This bill would hurt our company very, very seriously.

Mr. **Tauke**. I am not certain that I got the answer to the philosophical question that I asked. I understand that there is going to be some pain if this bill passes, but I guess that the concern of the committee is that there is going to be more pain if it doesn't, because you are building basic inequities into the system.

Right now people are theoretically protected by the Government regulations and refiners are guaranteed certain oil supplies. Dealers are guaranteed certain gasoline supplies.

Everybody calls for deregulation. Well, if you go with deregulation, then those guarantees aren't there any more. Therefore, I don't understand your argument. You call for some kind of access to crude oil. How do you propose that this crude oil situation be carried out, through Government regulation?

Mr. **Evans**. Well, what has happened is the value of crude oil in the world today is greatly in excess of the cost of finding and producing it, and this is the result of the OPEC cartel action which is plainly against the law in the United States.

Those refiners who are fortunate enough to have their own proprietary crude oil have a tremendous built-in advantage because of the actions of the OPEC foreign countries. An equitable supply of crude oil to the 170 or 180 refining companies in the United States that do not have their own crude oil would permit them to continue in business and serve the consumers that they have served.

Independent refiners carved a niche for themselves in a period of time when the crude oil was available, generally from independent producers to independent refiners; and the independent refiners had to overcome the profit that the major oil companies had in their own production.

When crude oil was $3 or $4 there was 50 cents or $1 a barrel profit in there, and independent refiners by lean, low-cost management and streamlined operations were able to save that much money in their refining and marketing.

Now, the potential profit in the barrel of crude oil runs to many, many times the total cost of refining and marketing. There is no efficiency which can offset this crude oil profit, as high as it is today.

Prevention of high volume, low-cost gasoline marketing by independent refiners would sharply reduce the number of refiners available in the United States.

It would have the effect of casting the refining industry back into the hands of a very small group of major companies.

It would concentrate a segment of the industry that we think is now providing real competition.

Mr. **Tauke**. You are all successful business people, and none of us wants to hurt you and your operations. Perhaps I asked a question that doesn't have a very good answer. At least I don't think I got one. You said in answer to my question, that the problem is that those major companies which have access to crude oil have a tremendous advantage over the independent refiners.

My response to you is that those gasoline stations that have ready access to gasoline, because they are hooked up with refiners and owned by refiners, have a great advantage over the independent gasoline dealer.

I don't know that we can solve either problem, but I think we are proposing a reasonable solution with the divorcement bill. We have obviously got some work to do but maybe as you give it more thought, you can give us further directions as to how we solve your problem and also that of the gasoline dealer.

Mr. **Pester**. Mr. Tauke, since our company started out as a marketing company, we sell our gasoline to our marketing divisions, of which there are two, at the same price that we sell to our wholesale customers, and we don't subsidize the marketing arm of our company from the refining arm.

If you can attain a perfect world of competition so that real efficiency stands on its own—if there were legislation or something that would say, OK, refiners have to stay on their own, retailers have to stay on their own, jobbers can be compensated for the functions that they do, and crude oil production is a separate business, and you can't take profits out of crude oil and put them onto the street in Cedar Rapids, Iowa—if there were some type of functional accounting, probably that would be the answer to this type of problem.

Mr. **Staggers**. Mr. Chairman?

Mr. **Bedell**. Mr. Staggers?

Mr. **Staggers**. I want to compliment Mr. Pester. I was looking at your prepared statement, in which you state:

> Independents also have responded to consumer needs by offering gasoline for sale when it is needed and where it is needed. That means that they have operated longer hours and in States and neighborhoods that major integrated companies have deserted.

I thought that was pretty good.

> Although the independent sector has been innovative and responsive to the consumer demand in a variety of ways, its most important contribution to gasoline marketing has been and remains the introduction of price competition.

I thought that was a very significant statement, and I think that your appearance here has helped us and will help us to solve some of the problems.

I know you want to be fair and we have to respect your business. We have a bill before us and we are going to act upon it. We appreciate your being here in an effort to help us solve your problems.

**Mr. Pester.** Thank you.

**Mr. Bedell.** Mr. Pester, first of all, I think you have made some beneficial suggestions. I think there are some problems with the legislation.

I look at them as minor problems, but at least some changes we should look at.

I took it from your testimony and that of Mr. Evans that your organization depend to some extent upon the majors for the crude oil that you get for your refineries, is that correct?

**Mr. Pester.** We depend on several different host countries, other refiners, crude oil producers, anybody but ourselves.

**Mr. Bedell.** You depend partly on domestic crude oil producers who also have their own refineries.

**Mr. Pester.** Some of them do.

**Mr. Bedell.** You depend to some extent upon people with whom you compete?

**Mr. Pester.** Yes.

**Mr. Bedell.** If we have complete decontrol and then there are limited supplies as there have been in the past, with complete decontrol would you expect those people with whom you compete to supply you the product they produce and close down part of their own refineries or would you expect them to supply it to their own refiners?

**Mr. Pester.** One of the real basic problems that we get into is the fact that probably right at the present time there is enough crude oil to go around. One of the problems is that if they shut down our refinery or independent refineries, for example, it is not good public policy because you basically are shorting regions of the country.

We don't really expect to be shut off. We think that we can enter into the marketplace and that there will be a marketplace that will provide us crude oil.

Now, I will refer to what Mr. Yancy, president of Ashland Oil, said at one time. Maybe we are going to have to pay 50 cents a barrel more, but if I only have to pay 50 to 75 cents more a barrel, and that computes to almost 2 cents a gallon, given our efficiency, we can still compete.

**Mr. Bedell.** What if you have to pay $5 more?

**Mr. Pester.** Can't do it, no way.

**Mr. Bedell.** You say in your submitted written testimony:

> We suggest, instead, that if you wish to analyze the state of competition within the industry you begin by focusing on access to equitably priced crude oil.

I don't know that I would have any great argument with that, but I guess the problem I have is it looks to me like you are in exactly the same situation with crude oil as the dealer is in regard to gasoline. If that is the case you are really destroying your credibility by coming in and saying, don't do anything for those people that have the same problem we have in a different area, but if it ever comes to us, do something for us.

Do you understand my question?

Mr. PESTER. I understand your concern, and I also understand their concerns, but I think that if you correct their problem, we are really sitting in between.

Mr. BEDELL. The question is, if nothing is done about your problem it appears to me, you certainly face a serious problem as to your survival in the future with deregulation.

With deregulation and no Government controls of any kind, it appears to me that you could face a situation where you would not be able to continue to exist.

Mr. PESTER. We face it every day. With controls or without controls in the marketplace, it does not really bother me to face risks of this nature if we don't have restraints and are allowed to make decisions throughout the whole realm of possibility.

I guess this is one of the problems I have philosophically with this type of legislation.

Mr. BEDELL. Mr. Evans, what did you mean by free entry?

Mr. EVANS. Well, it should be possible for anyone to start a new business in any phase of the petroleum industry, or any other business in the United States, and it should be possible to open a dealership or build a refinery or drill an oil well and start your own segment of the oil business. We think that free entry on the refining level has virtually ceased in recent years.

Mr. BEDELL. Why has it ceased?

Mr. EVANS. The crude oil access problems.

Mr. BEDELL. It seems to me you are exactly pointing up what we are trying to get at here. We are trying to say that the dealers should have access to products at a comparable price to his competitor, and with decontrol there is the opportunity to see that he doesn't get that and that is exactly what I think this subcommittee has in mind.

If this isn't what we are doing, then we need to know it but I believe we are trying to solve a problem in the retail place in exactly the way you are telling us that you would like to see it solved at the crude oil refiner situation, and that is where I have the difficulty.

As I said, I think you have made some good positive suggestions here but it appears to me, I don't see how the devil you are ever going to be able to come to Congress and say Congress better do something to see that you get adequate supplies of crude oil, if you are going to be here saying the dealers shouldn't be treated that way.

We have to be consistent in what we do. You have a legitimate concern as refiners and I think you should have protection, but I don't see how you are going to be able to come here and say the dealers shouldn't have any protection and come back later and say, but we think we should have it because of our size.

Mr. EVANS. We have no reason to say dealers should not have the right of free entry. We don't believe that producers of crude should be prohibited from owning refiners, and we don't think refiners should be prohibited from owning retail outlets.

Mr. BEDELL. You understand we do not propose refiners should be prohibited from owning retail outlets.

Mr. EVANS. Over time the effect of that, because of the ratio, would be to inhibit the refiners which depend upon company-operated stations to remain competitive with branded major company stations too.

They would lose their ratio over a period of time.

Mr. **Bedell.** No; they would not lose their ratio according to their present sales. There is nothing in this legislation that does that. I hope you understand that.

If you increase your market share and increase what you are trying to do then that could be the case, but we are in a situation with declining gasoline sales and we do not say that in anyway, so I hope you understand what is in the legislation.

Mr. **Evans.** I think I do.

Mr. **Dower.** I would like to comment on the ratio situation. What we are saying is, I think, we will compete in the marketplace as we have. We have never had sufficient crude.

The market is much more difficult now. We have some worldwide problems, but we can do that, and we can compete with the majors if we can continue to operate as we are doing.

Mr. **Bedell.** Do you think you are going to be able to do that with decontrol?

Mr. **Dower.** We have not during the present program asked for any Government assistance in getting crude oil and we certainly have gone through some difficult times.

Mr. **Bedell.** Excuse me, but you do have that, do you not, under the entitlements program? Don't you have help from the Government to enable you to be able to get supplies at a reasonable cost?

Mr. **Dower.** No, not get supplies, averaging the cost, but as long as everybody is averaging you have got to be part of that program. We have not gone to the OHA or anybody else on appeal and asked for crude supplies.

Mr. **Bedell.** None of your people have done that?

Mr. **Dower.** Not in Vickers.

Mr. **Bedell.** None of the people in your organization?

Mr. **Dower.** I am speaking for Vickers. I want to get around, to where we started. I hate to not be part of the problem, but end up being part of the solution. We don't have dealers in this type of situation, and the dealers, as you have heard just before us, keep referring to "major oil companies." But if the divorcement type provisions are enacted, they probably will affect about 2 percent of the majors' market, but will affect 100 percent of Vickers' stations.

Now, I am going to talk in generalities here about what comprises the biggest dealer group: they are major oil company dealers.

So now we are going to be crude deficient, and we are going to have to compete in that situation, and we have got refiners that are comparable.

Then we are going, in order for us to expand and grow——

Mr. **Bedell.** Wait a minute; if you are crude-deficient, how will you expand?

Mr. **Dower.** By outside suppliers; we sell twice as much as we make today.

Mr. **Bedell.** That would be my worry, with decontrol if you can't get the crude, your supplier is competing directly with you and he controls the supply.

How are you going to expand?

**Mr. Dower.** The difficulty in crude, we haven't held to that restriction anyway. If they want it—and I am talking about the freeze—if there were a big problem we would just let them have the oil.

**Mr. Bedell.** Your desire is to expand, and you think you are going to be able under decontrol to expand and take over more of the market in direct sales of your own stations; is that what you are telling us?

**Mr. Dower.** We would like to grow and we are in competition with awfully big companies and they can defend themselves. They operate through dealers. What is going to happen to me, if I want to grow, according to this program and the sales ratio? Because I am buying on the outside, and my refinery already has been sold out twice, I will have to buy additional gasoline.

Then I am going to have to support not only that growth of mine, but I have got to sell an equal amount to a major dealer, because they are the predominant number of dealers, so I have got to carry Exxon. I think that it is a little bit much to ask Vickers Petroleum, if I am going to have growth, to carry Exxon, too, or Mobil.

**Mr. Bedell.** It seems to me we are in a dream world.

**Mr. Pester.** That is a purchased product. Vickers, Pester, Rock Island, I imagine a lot of us, don't even refine all the gasoline we sell through our retail outlets.

Tom is referring to a situation where, if we refine so much, and we have more retail outlets, we supply them with gasoline that we go out and purchase. So we would have to go through an exercise on the gasoline purchased from integrated major, or somebody else with gasoline available, to supply our own retail outlets and that would be considered the growth. Then we would have to turn around, and sell it in accordance with a ratio, back to our service station dealers. Sometimes we pay more for that gasoline for our own service stations than the dealers do.

I can point out that the dealer tank wagon price is about 6 cents a gallon below the independent refiner price today.

**Mr. Tauke.** Unless I misunderstand the provision of the legislation we have before us, we really have not yet addressed that question of purchased gasoline, which I think was one of the excellent points you made.

**Mr. Bedell.** Yes.

**Mr. Tauke.** If I understand correctly, you say you are subsidizing Exxon in that you are purchasing gasoline from Exxon?

**Mr. Dower.** No; according to the provisions, any expansion I make I am going to have to have an equal amount that I have to sell in the independent market, the dealer market, and the dealer market is primarily major oil companies. So it is one of these hit-and-drag Charlies. Little old Vickers is going to have to go out and do just what we are doing now, only more of it. I am going to have to sell gasoline to dealers—who are mostly major dealers—so I end up supporting the Exxon market or Mobil's marketing plans.

**Mr. Tauke.** You should be able to make a fair return on what you sell, shouldn't you?

**Mr. Dower.** We are already selling twice as much, that is true of a lot of people in the independent refiners' segment, we sell more gasoline than we manufacture.

**Mr. Bedell.** We need to get on.

**Mr. Thomas.** If I may expand for just a moment. Really, the point Tom is trying to make is that 50 percent of the excess must be diverted into another channel. We are going to do it through a dealer channel or through a jobber channel or some method comparable to that.

As a hypothetical question, assume for a moment that our crude costs are above the national average, ergo, our product selling prices will be higher. What would happen if we could not find an account to buy that 50 percent? How would you envision we dispose of that product?

**Mr. Tauke.** It is hard for me to understand that during a surplus situation that you would be expanding your sales. But maybe you would. Even if you had such a surplus that you could not get rid of it, it is hard for me to believe you would be expanding.

**Mr. Thomas.** I think it is price related, Mr. Chairman. We are coming back around to the front end of the crude oil excess factor and the price we are forced to pay for it.

**Mr. Bedell.** I think you have a legitimate concern in regard to your purchase of gasoline and how you do that. I think that is a legitimate concern. We have to close but I would still tell you that I think you really have hurt your position very, very strongly in terms of taking a stand for help if you need help. And I think you are likely going to need help in terms of access to crude oil at fair prices, when you come here and testify that you think that the dealer is wrong to expect that same sort of protection and access in what he buys.

I think you have made some good points. I think some of the things you have brought up are legitimate and of concern. I have to tell you that your general stand I think is a mistake. It is not going to matter too much as far as our bill is concerned. I think from a total standpoint you cannot expect people to look at you differently than they do other segments of industry. I see some problems you have with this legislation, where it affects you.

But I think your real problem in the future, the same as with the dealers, is that you are depending upon your supplier. You are competing with him and also depending upon him for a supply of the product and the prices at which he is going to supply you and then you are going out and competing with him. I do not think you can compete equally.

I think you are going to need help. I think you have hurt yourself in trying to get that help, when you won't recognize that is the problem that these dealers have.

**Mr. Pester.** We do not really have any objection to your open supply ratio. Some of our members do because they do not completely understand it or the rack pricing provision. Those provisions that go to supply, those portions of the bill that address pricing with an open market, most of our members really have no problems with those. I guess we have major problems with ourselves being limited. That is where the problem is—we are being limited from expanding in a marketplace where we think we do a job well.

Mr. **Bedell**. Mr. Staggers.

Mr. **Staggers**. Just one or two comments on a provision contained in the bill.

One year after the date of enactment, all refiners of motor fuel will be prohibited from charging different prices at point of transfer if buyers are purchasing similar quantities of product in railroad cars or barge capacity. To the extent that the supplier can show actual cost differences for providing different quantities of the product, this has reference to rack pricing which I believe will be helpful. It does say within 1 year after enactment, it shall be done.

Mr. **Dower**. A lot of that is covered in the dealer day in court bill and the Fair Marketing Practices Act.

Mr. **Bedell**. I think most everybody agrees that is a big joke. There are hardly any dealers that can afford to go to court to pay the costs in order to do that sort of thing. It sounds great but I think the refiners might have enough money to do all that, but Mr. Dalziel does not have the money to go to court. That is one of the things we ought to recognize about our system.

Mobil has all the legal money they want to fight Mr. Dalziel in court. He doesn't have a Chinaman's chance to get the money he needs to do that. Until the American public recognizes how our court system works and recognizes that is the problem, I think we have permanent problems in our society.

We want to thank you for your testimony. It has been beneficial, frankly. I think you have brought up some things we ought to consider.

Our next witness is from the Society of Independent Gasoline Marketers of America, Mr. Thomas Allen, East Coast Oil Corp., Richmond, Va.

Mr. Allen, we are running way behind. We would certainy appreciate anything you can do to summarize your statement and to help us with our time problem.

## TESTIMONY OF THOMAS N. ALLEN, EAST COAST OIL CORP., RICHMOND, VA., ON BEHALF OF THE SOCIETY OF INDEPENDENT GASOLINE MARKETERS OF AMERICA

Mr. **Allen**. Thank you, sir. I will try to summarize my statement. I must say I feel a little lonely up here after the groups that have appeared prior to me. But I will do the best I can.

My name is Thomas N. Allen. I am president of East Coast Oil Corp., and also am president of the Society of Independent Gasoline Marketers of America (SIGMA) on behalf of which I appear today.

SIGMA is a trade association comprised of approximately 250 independent private brand marketers and chain retailers of motor gasoline. SIGMA members market gasoline in 49 of the 50 States through approximately 13,000 retail outlets. They employ between 40,000 and 50,000 people. SIGMA members' sales represent approximately 10 percent of the domestic retail market for motor gasoline. SIGMA members range in size from companies with only two service stations to companies that market through several hundred service stations. In sum, SIGMA is the principal representative of the private brand segment of the gasoline marketing industry.

Private brand marketers and retailers historically have been the most innovative and cost-effective segment of the gasoline marketing industry. Such marketers pioneered the high volume/low margin marketing concept. They consistently have been the most consumer-sensitive portion of the retail market and historically have delivered gasoline to the motorists at the lowest possible price by minimizing the amount of fixed operating cost which must be recovered in their per unit selling prices.

Simply stated, independent private brand marketers and retailers built their businesses on the basis of their marketing efficiencies and are the most efficient retailers of gasoline in the domestic market. As such, they historically have been the price-conscious gasoline consumer's best friend.

However, as marketing, rather than manufacturing companies, SIGMA members are able to fulfill their historic market role only under conditions in which they can obtain adequate supplies of gasoline at a cost which permits them through their marketing efficiencies to compete effectively in the retail market.

SIGMA understands that the legislation under consideration today is premised upon the assumption that refiners have behaved in a predatory manner and thereby have threatened generally the competitive structure of the retail market for motor fuels and independent dealers specifically.

Mr. **Bedell**. That is not the reason for this legislation at all. The reason is, for the independent dealer to continue to operate with decontrol we see the serious problems he will be facing.

Mr. **Allen**. Perhaps I could address that during the question and answer period. I would be happy to. An initial review of conditions in the gasoline marketplace during recent years certainly could lead a reasonable person to conclude that such an assumption is valid.

Recent years have witnessed disparities in rack prices of an unprecedented magnitude. Some refiner-operated retail outlets have marketed motor fuels at price levels significantly below those with which their independent customer-competitors can compete. Morever, supplies of gasoline have been limited to some independent marketers while their refiner-supplier competitor's outlets appear to have an abundance of product.

SIGMA concludes that the radical disparities and dislocations which have characterized the motor fuels market during recent years are primarily the result of intervention in the petroleum market by the Federal Government and changes in consumers' purchasing patterns. Thus, SIGMA cannot support H.R. 6722 at this time. We do, however, strongly support this subcommittee's willingness to address the critical issue of the structure of the petroleum industry in general and the motor fuels market in particular.

H.R. 6722 clearly reflects its sponsors' recognition that something is radically wrong in the industry. We believe that if the causes of the recent dislocations and disparities are not recognized and remedied immediately, the long-term prospects for the competitive viability of independent marketers and therefore for consumers who have been able historically to rely on this segment for protection from unnecessarily high prices are bleak. However, SIGMA does not believe that the answer to existing problems is a legislative prohibition on participation in the market by certain competitors. Rather, the answer to the existing threat to motor fuels consumers' interests is the elimination of Government-imposed impediments to competition.

At the outset, one must recognize what a private brand marketer, such as a SIGMA member, does for a living. He acquires refined products from a supplier and sells them to consumers. To perform this function he must be able to acquire his products at a cost which is roughly equivalent to the cost incurred by his competitors. Historically, traditional market forces, that is, competition, assured a private brand marketer that he could fulfill this condition precedent to his economic and competitive viability. However, the Federal Government's intervention in the petroleum industry has altered dramatically the competitive structure of the marketing segment, and thereby effectively eliminated competition at the level of distribution at which SIGMA members buy product.

The imposition and maintenance of price controls on domestically produced crude oil has been a disaster for independent markets for at least two reasons:

First, by reducing overall domestic refining feedstock costs below world levels, price controls have erected a highly effective nontariff trade barrier to the importation of foreign products. While most SIGMA members historically were never required to import gasoline to meet their demands, the possibility of such action by marketers provided a significant incentive for domestic refiners to supply domestic marketers on competitive terms; and

Second, inequities in the system of crude oil cost equalization, the entitlements program, have resulted consistently in some refiners' costs, and therefore their selling prices, being significantly lower than their competitors. Regardless of a SIGMA member's marketing efficiency, it cannot compete in the retail market when its acquisition costs are so much higher than its competitors' as to render those marketing efficiencies irrelevant.

The maintenance of price and allocation controls on gasoline during periods of adequate supply similarly have had disastrous consequences for the independent marketing segment of the motor fuels market. During such periods, the maintenance of allocation controls on gasoline has served as an effective barrier to retailers changing supply arrangements. This fact virtually eliminates refiners' incentive to compete for SIGMA members' business. Therefore, in a market in which only a limited amount of a refiner's increased costs can be recovered through ultimate sales to consumers, there exists a strong incentive to recover all costs possible at the wholesale level of distribution where demand has been rendered virtually inelastic by regulatorily frozen supplier/purchaser relationships.

The effect of price controls on retail selling prices has been equally insidious. Department of Energy regulations require refiners to establish their retail selling prices in a method totally different than that employed by independent marketers. The result has been that some refiners directly operated retail outlets have been required to price gasoline substantially below the prices which their customer-competitors are able to charge. Thus the regulations frequently have required refiners to undertake pricing activities which in the absence of controls would have given rise to claims under the antitrust laws.

SIGMA members are retailers of motor fuels. They are in the same business as dealers. As such, they are extraordinarily vulnerable to any predatory practices by their suppliers. Moreover, because they historically have been at the cutting edge of competition and marketing innovation, their disappearance from the marketplace would be a tragedy for consumers.

SIGMA agrees completely with the sponsors of H.R. 6722 that Government action is essential to the restoration and preservation of the competitive structure of the motor fuels market. However, the appropriate action of the Government would be total withdrawal from the petroleum market during periods of ample supply at all levels rather than additional intervention.

The Government's intervention in a market to protect one segment of that market is accompanied by a cost extracted from another segment of that market. SIGMA's members built their businesses on the basis of their ability to deliver goods to consumers on a more cost-efficient basis. They believe that the major impediment to their performing this service for consumers is not their competitors but, rather, intervention of the Government in the marketplace. Simply stated, the Government's intervention in the petroleum industry effectively has prevented the market from working. SIGMA doubts that the enactment of this bill really would cure the problems in the motor fuels market which the Government's participation in the market has caused.

It seems more likely that such action will in fact compound those problems to the detriment not only of independent participants in the market, but also the consuming public. For example, the aid proposed for dealers wishing to acquire retail outlets will give them substantial advantage over SIGMA members who might wish to obtain such a property.

Similarly, the pricing provisions of section 3(c)(1) of the bill effectively re-enact the cost justification defense of the Robinson-Patman Act. However, because this section does not provide a meeting competition defense similar to the Robinson-Patman Act, the section will eliminate competition between refiners for the business of large volume customers, SIGMA members. Such a reduction in competition at that level of distribution of necessity would result ultimately in higher prices to consumers.

SIGMA is also concerned about the precedent which the enactment of this bill would establish, and the ultimate objectives of some groups supporting this legislation. The legislative apportionment of market shares and the prohibition against market participation by some first envisioned in the bill could be extended to other participants in the market. Moreover, the reporting requirements of the bill applicable to any firm which owned 50 or more retail outlets in 1978 suggests that such an extension is likely.

This reporting requirement would be applicable to many hundreds of firms, including convenience store operators, jobbers and chain retailers, which have nothing to do with the refining of motor fuel.

Since no charges of predatory behavior could be supported against such firms as a class, it appears that the remedies embodied in the bill are viewed by some groups supporting the bill as only a first step in the ultimate process of limiting competition in the retail market for motor fuels. In short, those reporting requirements lead SIGMA to believe that its members are among the ultimate targets of some groups which support the bill and that motor fuel consumers would be the ultimate victims of a legislatively-accomplished division of market shares in the retail market for these fuels.

In conclusion, a problem exists regarding the competitive structure of the motor fuels market. The bill's sponsors are right to be concerned about this problem and SIGMA urges them not to abandon their commitment to alleviate that problem. However, this subcommittee should recognize that the root cause of the distortions in the market for motor fuels is the Government itself. The Government's intervention in the motor fuels market has jeopardized the viability of all independent marketers and retailers, dealers included.

The enactment of the bill would only further compound this problem by adding another layer of Government involvement in a market in which such involvement radically alters the economic realities which underlie its operation. It is SIGMA's fear that this legislation will not preserve the viability of its small business members but, rather, will increase the threat to their ability to compete over the long term.

SIGMA appreciates the opportunity to express its views regarding this bill and I will be happy to answer any questions that you gentlemen might have.

Mr. **Bedell**. Mr. Tauke.

Mr. **Tauke**. Thank you for your testimony. Perhaps you could enlighten me a little bit about your organization and its members.

Mr. **Allen**. Yes, sir.

Mr. **Tauke**. I would assume first of all you would have as members of your organization groups like the convenience stores that we talked about earlier, 7-Eleven's, or the Casey's general stores in our part of the country.

Mr. **Allen**. We do. Southland in fact is not a member but there are some convenience store chains that are members, yes, sir.

Mr. **Tauke**. Would that be the general nature of your membership?

Mr. **Allen**. No, sir. That would represent at the present time a very small percent of our membership. Most of our members are chain retailers of gasoline who generally and traditionally sold only gasoline; to meet the competitive threat of lower gasoline margins a lot of them have diversified backward into convenience stores.

Mr. **Tauke**. Where would the members of your organization receive their supplies of gasoline?

Mr. **Allen**. They receive their supplies from numerous major refiners as well as independent refiners. In my case, my company consists of 29 stations. They are located all in the State of Virginia. We have three primary suppliers and when conditions are right and there is a surplus of product, sometimes we buy additional product from other suppliers but typically we have three suppliers ourselves.

It is a very unstructured situation. Something frankly that one of our concerns about legislation in this area is that the economic forces that are at work at the retail level are so intricate and involved that for anyone to regulate it successfuly, it is an impossible task.

Mr. **Tauke**. I think that is probably true. I would certainly concur with you in your comments about the need to remove regulations from the energy industry. However, it also occurs to me that if we remove regulations and we keep reducing the amount of crude oil that we import from foreign nations—which means we will generally be in a period of some shortage of supply—that you would want some kind of protection to prevent denial of supply to you.

I would think you would find it very difficult under those circumstances to compete with the people who supply you.

Now there is one of two ways we can go: Either we can have Government action to insure that there is competition in the marketplace or, otherwise, we can have governmental intervention to regulate every step of the process. It seems to me that the former is correct governmental intervention, historically in line with what we believe to be a competitive free enterprise system. The latter is not.

Mr. **Allen**. I would agree with you, sir, and would make two comments on that.

First, SIGMA was one of the most active groups seeking Government intervention in 1973 when the Arab oil embargo first occurred. It was the feeling of our association that the industry needed, in effect, a traffic cop that could allocate fairly among the participants at the retail level, shares of gasoline. And I certainly personally favor, and I believe many of the members of our organization do, the existence of a standby allocation program that could be triggered in the event gasoline supplies got short again.

I believe that that is very important because we in our own experiences had one of our suppliers cut us off in 1973 because he discovered he could sell all of his product through his own locations.

Mr. **Tauke**. What you are saying is, in times of surplus we would like to have a free and open market?

Mr. **Allen**. Exactly.

Mr. **Tauke**. But in times of shortage, make sure we are protected?

Mr. **Allen**. I think that is correct.

Mr. **Tauke**. I do not think that washes too well. It occurs to me that the only fair way to handle this, unless you have permanent government regulations that protect the other guy in times of surplus, is to make certain that there is not an anticompetitive force or a superior force in the marketplace. That is, I think, what we are trying to prevent in this legislation.

We are running out of time.

Mr. **Allen**. If I might, I would like to simply point out that during periods of ample supply there really is, and I do not think any of the testimony you gentlemen have heard today would contradict what I am going to say, there is no more competitive market in the United States, in any business than the retail marketing of gasoline in periods of ample supply.

I think that the Department of Energy, if you were to ask Hazel Rollins or the other individuals over there, what their feelings about controls are, I believe that they would respond they are very anxious for controls to expire September 30, 1981, as we are. I believe, I am not—I cannot speak for Ms. Rollins, but I believe she also would support some sort of standby controls, in the event that product got tight again, to make sure that independent marketers and dealers did not go under because primary suppliers found that they could sell all the gasoline they had through their own outlets.

Mr. **Tauke**. That sparks one more comment, Mr. Chairman.

I am sure they would agree with you. I think you are absolutely right. You are suggesting that unfairness occurred between 1972 and 1978. In 1972 we had a base year system. A lot of people who I presume are in your organization, were able to go out during the period of surplus and rapidly expand their market, because they could get supply and sell it at a cheap price.

When the market got tight, they didn't have an allocation. So then they came in and said "My gosh, we have to change the allocation now." So they used the cheap price during the surplus period in order to expand the market, but then when the time came to face the consequences of doing that, they wanted protection from the Government in order to be guaranteed that expanded supply. I do not think it can work both ways.

Mr. **Allen**. I think one of the great challenges for you gentlemen is to be able to sit back at times while various members of the business community, whether it be gasoline or anything else, come in bleeding about their problems, asking the Government to solve them, and I think it must be very difficult for you gentlemen at times to sit back and say, "Hey, that is what the free market enterprise system is all about."

I don't envy your job but I think sometimes it is necessary to sit back and say that is what the system is all about.

Mr. **Tauke**. I appreciate your testimony. Thank you.

Mr. **Allen**. Thank you.

Mr. **Bedell**. Thank you.

We are very short of time.

Mr. Allen, are any—do the refiners have ownership in any of your member stations?

Mr. **Allen**. I do not have exact figures on that. My wild guess would be that perhaps 5 percent of our members are in some way tied in with refiners.

Mr. **Bedell**. Would those be your smaller or larger members?

Mr. **Allen**. They would tend to be the larger members.

Mr. **Bedell**. Thank you very much. I have no further questions. We appreciate your being here very much. Thank you.

Mr. **Allen**. Thank you.

Mr. **Bedell**. Our next witness is from the Independent Gasoline Marketers Council, Mr. Jack Blum of Washington, D.C.

## TESTIMONY OF JACK A. BLUM, BLUM & NASH, WASHINGTON, D.C., GENERAL COUNSEL, INDEPENDENT GASOLINE MARKETERS COUNCIL

Mr. **Blum**. Thank you, Mr. Chairman, for the opportunity to testify.

I have provided a prepared statement. With your permission I would like to have that made part of the record.

Mr. **Bedell**. Delighted, and we would hope you would attempt to summarize.

Mr. **Blum**. I will summarize.

Mr. **Bedell**. It is about 2 minutes to 12.

Mr. **Blum**. I hope I have more than 2 minutes because of the importance of the subject.

Our association is a trade association of nonbranded independent marketers, principally operators of large groups of stations. That is to say, the smallest members of our association have in excess of 100 retail units. We can support a divorcement bill involving the top 20 refiners, but that is as far as we can go.

The rest of this legislation we believe is damaging and cannot be justified. I will talk about it from the consumer point of view at the outset and then perhaps expand on my remarks to explain a little more from the industry point of view.

Mr. **Bedell**. Did you say your smallest dealer has over 100 stations?

Mr. **Blum**. Our smallest member has over 100 retail units. Our position is roughly this: The consumer is best served by vigorous competition. And that means vigorous price competition. There are some fundamental facts in retailing you have to recognize. Gasoline demand is down 8 percent. That is because Government programs are working and prices are up. The demand is going to continue to decline.

If we have declining demand, there is demand for fewer retail outlets, somebody is going to have to close. There is a second hard truth to this whole business, that is that cost of doing business is directly related and in fact in a very sharp linear fashion to the number of gallons you sell.

At 35,000 gallons a month, you have roughly the same overhead you have at 300,000, which means that the cost per gallon of doing business declines with startling rapidity. Thus what happens is the smallest retailer simply cannot hack it economically.

The only way you can save him in the kind of market situation where consumers are very cost-conscious is either to give him a lower buying price than everyone else or guaranteeing him a higher selling price than everyone else. Neither of those things benefit the consumer.

I worked on the Senate Antitrust Subcommittee staff. I remember very well Hubert Humphrey's protection of the small pharmacists, with the fair trade laws, and how many years it took to get those fair trade laws repealed because they were not helping the consumer and they were certainly not even necessarily helping the small pharmacists. It is that kind of legislation you have to avoid.

As we go through this bill, there is much of it that says we are more interested in keeping the number of businesses going than we are in protecting the consumer interests having the lowest possible price. An example, is the ratio issue.

The only way I know of keeping your sales in ratio with someone else's is to fix prices with him. The way you control sales, the way you control your volume is to set a price. If you have too low a price, your volume goes up; if you have too high a price, your volume goes down.

As far as I am concerned, the provision of this bill that says I have to keep my sales constant in one State with the competitor with whom I am supplying is nothing more than a provision that says I have to more or less monitor my prices to make sure that they are no lower than the other guy's prices because if my prices are lower than the other guy's——

Mr. BEDELL. Excuse me. I hope you understand that isn't what the bill says.

Mr. BLUM. I would like to know how else it might work as a practical matter.

Mr. BEDELL. There are some problems with the State allocation segment, but I hope you understand that the bill does not say that you cannot increase your sales in a State.

Mr. BLUM. But you have to increase them a ratio, and the only way to keep a ratio is to keep your retail price in tandem with the other guy's retail price. In other words, if I am going to hold back my own sales so that another independent who is my customer at the wholesale level can continue to sell product in the same ratio that I am selling it, he has to have the same price I have. That is a price function.

What you are doing is suggesting that there be price fixing at the retail level. There is no other way to make that ratio work. It is the experience——

Mr. BEDELL. Either I do not understand the bill or you do not, and it is important that it is clear. So you go through that again. I do not understand what you are saying.

Mr. BLUM. OK. If you are a wholesaler and you are selling a certain amount of gasoline——

Mr. BEDELL. A wholesaler?

Mr. BLUM. Or a refiner.

Mr. BEDELL. Which?

Mr. BLUM. Either, it doesn't much matter, but let's say a refiner because the bill does directly apply to refiners. The only way you can expand is to make available an equal amount as the bill says to independents at the same time you increase your sales. But that also implies that you are controlling the amount of product you are selling in any given State.

In other words, if I am going to sell more or less gasoline in a State, you are taking it as a decision made in advance. I am going to sell *x* hundred thousand of gallons in Kansas tomorrow. In the hard realities, the way this business works, the only way you find out how much gasoline you are going to sell in Kansas is to set a price, the market determines how much you sell and you get the feedback from that price. And the only way you adjust the amount you are selling is to adjust your price.

What I am suggesting is the only way you can keep prices in tandem or volumes in tandem, namely respect that ratio, is to fix prices. And I submit that is not in the public interest.

Mr. BEDELL. Well, unfortunately it has not been working that way. As you well know, they are told how much product you can sell to your dealers; isn't that correct?

Mr. BLUM. There are two kinds of situations in this legislation. We have to distinguish between them. There is a kind of situation where the product is in terribly short, supply, in which case DOE says how much is sold.

Mr. BEDELL. Right.

Mr. BLUM. Those are conditions which Congress has said ought to be regulated. But we presume that this bill is to be in effect when there is deregulation.

Mr. BEDELL. Right.

Mr. BLUM. That assumes there is plentiful product but demand is down. In that situation there is no saying to anyone how much they sell, how much they sell must be determined by their price. And I believe this committee has an absolute obligation to see to it that the man who delivers it at the pump for the lowest price is going to be the guy who succeeds in the marketplace. I do not care if he is a small guy, big guy, medium sized, if he can do a better job the consumer deserves the benefit of his business.

Mr. TAUKE. I do not think that is an accurate statement and it certainly doesn't reflect my philosophy. It is possible that we could have one company in the country that could deliver the product at the cheapest price and that, therefore, we would let that company theoretically take over the entire marketplace. We do not permit that in this Nation because we believe that having many people involved is what in the long term insures competition.

I think that is the kind of situation that we are beginning to face in this country.

Once we have deregulation, which will allow the squeezing out of certain marketers, then I believe we have a potential possibility of having a few marketers take over. That is why I disagree with your assertion that we are somehow stifling competition. I would contend, on the other hand, that we are maintaining competition.

Mr. BLUM. Let me address that specifically.

The fact in this industry has been that by and large independent marketers of all varieties, particularly large nonbranded but also small nonbranded, have had a tremendous competitive advantage in the efficiency of their direct retail operation over the majors. That has been true to a degree that has astonished outside observers.

There is tremendous efficiency for relatively small businesses such as Mr. Allen's which can make a decision very rapidly, they operate with much lower overhead. They know how to put units in in a much more efficient and effective way.

The only issue as far as members of my organization are concerned that threatens the survival of an independent are the enormous in part Government-induced disparities in the rack price of gasoline.

Mr. **Tauke**. May I interrupt you again?

Another issue is: Are you going to be able to get the supply to sell?

Mr. **Blum**. In times of surplus that is a market issue.

Mr. **Tauke**. Right. You are assuming we are going to have times of surplus. You are just like——

Mr. **Blum**. No, not at all. Let me go back again.

If we have an emergency interruption of supply, that is to say an absolute cutoff situation which is a temporary cutoff in the Middle East or wherever, and the assumption is we are going to have supply back in a reasonable amount of time, it strikes me that there is an appropriate time for Government intervention.

Mr. **Bedell**. Sure.

Mr. **Blum**. But—let me finish. But if we are in an overall declining market, if we are in a situation where long term the Nation will use less gasoline, need fewer stations, need fewer refineries or whatever, there has to be an adjustment process. It is one thing to have an emergency intervention; it is another thing to say we are going to keep the structure that we have, irrespective of overall long-term national need and irrespective of the consumer need for, at this point, the greatest efficiency and the lowest possible price.

Mr. **Tauke**. I think all of us recognize we are going to have less outlets in the future because we will have less gasoline to market. We just want to make certain that the independent has a chance to be in there as one of those who survives and is able to market gasoline.

You are like the previous witness. You want to be guaranteed supply during time of shortage. You want Government controls. Yet, you don't want Government controls in the open marketplace, nor do you want to make certain that there is open competition in the marketplace——

Mr. **Blum**. We have said, and I think you may have missed this, we have said we favor the divorcement of the stations owned by the top 20 retailers.

I will go further. You had an earlier witness who was not prepared to say this, but we will say it; we also favor crude oil divestiture, we have been on record for that for a very long time.

We think those steps would begin to free up the market in a significant way. What we are saying is, these various attempts to adjust and to create ratios and to create cost justification defenses are going to create absolute chaos in marketing.

I would like to just wander into what we see the complexities of rack pricing to be as a case in point. Our question becomes, whose rack? And what do you do with the vastly intricate system of supply and distribution that now permits people to operate 200 retail units?

To give you an example, one of our members buys supplies at a refiner in Texas. He puts this in a plane heading north. He then arranges to have that exchanged with a dozen different companies in a dozen different locations, exchanges that permit him to supply stations in locations remote from the plane.

How are you going to calculate what the rack price was and whether there is fairness with respect to an individual major brand dealer who is down the block? I think it defies one's imagination and one's bookkeeping ability.

Mr. **Bedell.** I do not understand why it does. It would seem to me when that gasoline is deliverd at the rack, it would be delivered at a given price. The same thing if he wanted to trade that for other gasoline, he has the freedom to do that as long as he bills them the same.

Mr. **Blum.** There are two sets of problems, there is a time problem as well as a transportation problem.

Let me give you an example. If you buy at a refinery rack in Houston, one shipment goes by pipeline, one goes by water, one shipment gets there ahead of the other shipment. The price on a given day is equal to all comers, on a given day the guy who got the shipment there faster is able to bomb everybody else in the marketplace. Have you solved the problem?

Mr. **Bedell.** The problem there is everybody still buys at the same price at the same time and if somebody happens to buy before price easing up or after they go up, it seems to me that is the way our system works and I do not see that as a great problem.

Mr. **Blum.** Let's go back to the individual dealer. He is looking around him and he is saying, my God, these other guys are able to buy product for less money than I am and therefore they are undercutting me, if it is yesterday, tomorrow or whenever you are in a terrible——

Mr. **Bedell.** I submit you are making a mountain out of a molehill. Prices vary from day to day, we all know that. Maybe I go to the grocery store today and buy something cheaper than I do tomorrow. That could easily happen in anything. But it seems to me you are trying to make something overly complex. However, if there is that complexity, we should know it.

Mr. **Blum.** Let me give you a couple of real world——

Mr. **Bedell.** You have given two and I do not think they make any sense, the two you have given me.

Mr. **Blum.** Here is one example; a supplier in Texas provides a quantity which is then exchanged with another company for a quantity in Colorado.

Mr. **Bedell.** He would give it to them at a given price which would be the same price he would anybody else?

Mr. **Blum.** Plus or minus the transportation differential to Colorado? Does that solve the competitive problem in Colorado?

Mr. **Bedell.** No, the transportation problem is a separate problem. If he gives them the same price as he would anybody else, and he would be required to do that if he were going to trade product, and I think it is fair because otherwise you have a million loopholes——

Mr. **Blum.** I submit to you indeed when this kind of issue gets to be litigated, you will have not 1 million loopholes but 100 million loopholes.

I submit as I look at it, this legislation with the provision of rack prices such as many of our members have wanted to have, rack pricing is absolutely unenforceable.

I tell you this with some pain because early on a predecessor of mine with this association tried to draft a rack-pricing bill and the further into it we got and the more we explored the possibilities and the probabilities and the time problems and the transportation problems, the more difficult this problem became. We simply finally had to conclude it would be more anticompetitive than useful for anyone.

Mr. **Bedell**. If I could, we are short on time.

I would ask that you meet with our staff to go over this so that you could explain any problems that we may not be aware of.

I believe for us to spend time debating, it is not going to be particularly productive. If there are problems with this that we are not aware of and do not understand, then I would like to know them.

Mr. Tauke, did you have something to add?

Mr. **Tauke**. I would like to insure that the minority staff be included in that meeting as well.

Mr **Bedell**. Thank you.

Mr. **Blum**. Thank you, Mr. Chairman.

Mr. **Bedell**. Are you through?

Mr. **Blum**. Unless you have any further questions.

Mr. **Bedell**. Mr. Tauke, do you have any questions?

Mr. **Tauke**. No, I don't believe I do, Mr. Chairman.

Mr. **Bedell**. You said in your prepared statement, that brand names are meaningless, all gasoline is functionally identical. Would you expand upon that?

Mr. **Blum**. All gasoline is functionally identical. We have been through that many years. Nonbranded independents have been able to sell against major brands and the only issue is price, price and availability.

If you have the right station at the right place at the right price, you get the volume.

Sohio is a major brand and they did not do well in market share until the Government subsidized its prices.

When its prices were 20 cents below everyone else's, the market share went from 24 percent of the Ohio market to 37 percent of the Ohio market. The consumer knows all gasoline is the same, and they are principally interested in price and availability.

Mr. **Bedell**. The one problem we have is that if this is correct, and the consumer knows that all gasoline is the same and then if a major brand of gasoline has a number of stations which they lease to dealers to sell that brand of gasoline, and if the dealer then has to pay more money for that gasoline because it is branded, and then that same major refiner goes across the street and opens up an unbranded station and puts in their unbranded gasoline at a lower cost, then it would appear at least to me that the poor guy who is leasing that station and having to pay the extra money for the branded gasoline is at quite a disadvantage.

Mr. **Blum**. There is no question about it. There is no question in my mind either that the major brand people have looked at the situation and said, look, we can segregate our markets. It is like beer or cigarettes or any number of other things where you have multiple brands and multiple marketing approaches to set different prices at different points on the demand curve and make the most profit.

It does make competitive positions very difficult, but I should say that part of that is a question of why you go into the branded dealer business.

You should be on notice, if you are about to sign a lease on a 35,000-gallon-a-month station across the street from a pumper, that you have a very serious problem, especially if it is your supplier's directly operated station.

Mr. **Bedell.** Thank you very much, Mr. Blum. We would ask that you meet with the staff here, and we will make your prepared statement part of the record.

[Mr. Blum's prepared statement follows:]

### PREPARED STATEMENT OF JACK A. BLUM, GENERAL COUNSEL, INDEPENDENT GASOLINE MARKETERS COUNCIL

My name is Jack Blum. I am the General Counsel of the Independent Gasoline Marketers Council, Inc., a trade association of non-branded independent retailers of motor gasoline. Council members operate in 45 of the 50 states and operate groups of stations which are, for the most part, high-volume, self-service units.

The issues raised by H.R. 6722 are serious and deserve careful consideration. The marketing of motor gasoline is going through a wrenching change, and small businessmen by the thousands are leaving the ranks of the independents. Some of these changes are the natural result of rapidly changing business conditions. Other changes are the result of the government regulatory system which has had an increasingly profound and negative impact on the entire gasoline manufacturing and distribution system. Both these problems are real. But equally real and equally deserving of attention is the secondary brand activity of the major companies which is steadily driving competitors from the field.

We believe that a number of major companies have taken advantage of the regulatory and market situation and have used their market power and access to product to enhance their own market share at the expense of their smaller, less powerful, customers and competitors.

The task facing this committee is to sort out the anticompetitive behavior and identify its role in the changing market. You should write legislation which will enable the enforcement agencies to stop the abuse of market power that goes with vertical integration. The challenge is to write a bill addressed to the abuses of market power without disrupting the free market and the process it uses in adapting the public needs. To do this the committee must remember that the consumer wants an efficient distribution system to bring him his product at the lowest possible price. This consumer interest must be the first priority, and it must weigh against the desire to preserve the small businessman whether or not his business has something to offer.

We can all remember the anticompetitive impact of the fair trade laws which were passed to preserve the corner drug store and the anticompetitive impact of the state liquor laws which fix prices. Those mistakes should not be repeated.

Understanding the present situation must begin with an understanding of the fundamental economic facts in gasoline marketing. Less gasoline is being sold on a retail basis each year, and this downtrend will continue for years to come. The decline in demand is a national blessing. It is the result of higher prices, smaller cars, and the cumulative impact of government programs. As demand declines the need for outlets to sell the product declines as well.

There has also been a trend to high-volume stations. The reason is simple economics. Most overhead at a retail outlet is in the form of fixed costs. The same amount of real estate, the same investment in improvements, the same lighting and the same manpower can be used to sell 35,000 gallons a month or 350,000 gallons a month. Translated to retail economics it means that a 35,000 gallon a month station could lose money selling at a 17 cent a gallon gross margin, and a 350,000 gallon a month station would show a ten cent a gallon profit assuming both had the same cost of product. This sharp decline in unit cost against volume increases is well known to non-branded independent marketers. When given the chance they will always cut their retail price to increase their volume and lower their unit cost.

The classic joke in our segment of marketing is the wry comment of the marketer who is selling his product for less than he paid but explains to all who ask that he will, "Make it up on volume."

The consumer is the direct beneficiary of this behavior. And the consumer has learned that the only issue in gasoline marketing is price. Brand names are meaningless, octane is posted, and all gasoline of the same octane is functionally identical.

It is natural, therefore, that the first marketer to feel the financial pinch in the present environment is the branded dealer who is selling 35,000 gallons a month. At the present controlled price margins of 17.1 cents, he is at the thin edge; and if his volume declines and unit costs increase, his situation is untenable.

We believe that this committee cannot and should not try to protect the position of this marginal dealer. He must be responsible for saving himself in a free market. The two ways of protecting him legislatively are to fix prices at an artificial level which will permit him to survive, or to require that he get a large share of the available gasoline through the allocation program so that a certain number of customers must come to him no matter how high his price.

Our association has spent innumerable hours trying to convince the Department of Energy that changes in the allocation rules designed to favor the smallest dealers are competitively harmful, and will result in higher consumer prices and improper distribution of product.

There is, however, a second reality of the marketplace. There is no way of telling whether a fully integrated major oil company which operates retail units directly is playing fair. The books of an integrated oil company are among the great mysteries of the world. It is impossible to tell whether a given retail outlet which they operate is profitable or not. Whether the station is being "subsidized" is a function of who the bookkeeper is, what his instructions are, and which set of books you inspect.

For many years we have been reasonably certain that some integrated companies have operated their retail units at a loss to keep pressure on their independent customers and competitors. Some of this behavior may have been the result of price regulation but much of it has been plainly predatory.

For their part the majors have been adamant that they do not subsidize losers. But I can still remember the testimony of the treasurers of several major companies at the hearings on D.O.E.'s then proposed Federal Reporting System. The treasurers all agreed that an answer to the subsidy issue was impossible to come by and that even that attempt would be a waste of time because any answer would be arbitrary.

To this we say that the top twenty major refiners should be required to get out of direct retail operations. There is no place on the street among competitors who watch every tenth of a cent in costs for companies who can't figure out whether they are making or losing money.

One mistake by an integrated company could ruin a cost-conscious, street-wise, competitor who is responding to market conditions and delivering the product to his customers at the lowest possible price. The elephants should not be allowed to trample the ants.

Our members have labored long enough against major company secondary brand operations which have obviously high capital costs and which have been able to obtain allocations because the parent company is a "willing supplier" and are selling their product at prices clearly below cost.

By the way, we know the sales are below cost because our members buy product from the same companies and are very good at estimating operating costs.

Unfortunately, support for retail divorcement for the top 20 refiners is as far as we can go in supporting the remedies sought by the smallest dealers and reflected in the pending bill. And for that reason we must oppose H.R. 6722 and urge you to look for another remedy.

Rack pricing is an idea which has been kicked around in the gasoline marketing business for a long time. In theory everyone thinks it is a good idea; but when you get down to the details of how it would work or how it would be enforced, support for it evaporates. The only way it would work would be if prices for both gasoline and marketing services were fixed, and that is no answer at all.

The first question "rack pricing" raises is which rack? Do you mean the rack at the refinery, the rack at the deep water terminal, the pipeline terminal, or the jobber's bulk plant? If equality is to be the rule, does Congress propose to require that all gasoline go through the hands of the same number of middlemen?

Inasmuch as different forms of transportation have different speeds and different costs, if a waterborne cargo beats a pipeline tender to a distant location, the notion of price equality will have been defeated by price changes over time. Any attempt at enforcement will lead into a hopeless bookkeeping maze from which no litigant could ever emerge.

The provision requiring refiners to keep level market shares on a state-by-state basis is legislative cartelization. The only way a refiner could be sure that he didn't sell too much gasoline is to raise his price. Thus, if marketers who purchased gasoline from independent refiners were inclined to, they could force their refiner competitor to keep a high price by keeping high prices themselves. We are certain you don't want that result.

The information requirement is destructive of competition. The record requirements of D.O.E. already have the account departments of our member companies tied up in knots, and the information doesn't ever seem to be properly complied.

To this day D.O.E. cannot say how many retail outlets there are. Its market share statistics are useless, and it must depend on state tax figures to get meaningful numbers. Marketers don't need more federal forms. The majors, on the other hand, are geared up for federal forms; and their computers have no trouble at all with one more set of numbers.

The provisions of the bill which permit open supply at stations are not very meaningful from the perspective of a nonbranded independent. But the real problem is not "open supply." It is refusal to deal. Many refiners still will not sell products to an independent marketer under any circumstances. That issue is not addressed, and my experience with antitrust legislation tells me that it is not likely to be addressed.

Our members have complained bitterly, and with more than a little justification about unfair competition from their own suppliers. Time and again I have been told about the supplier with a direct operated station across the street that is selling gasoline for less at the retail pump than it is at its wholesale rack. From our point of view, that is the issue which must be handled and as rapidly as possible. Unfortunately, this bill does not do that.

If you have any questions, I will try to answer them.

Mr. **Blum**. I would be happy to meet with your staff.

## PANEL CONSISTING OF ROBERT J. THORNHILL, THORNHILL OIL CO., FORT WAYNE, IND., ACCOMPANIED BY PHILLIP R. CHISHOLM, DIRECTOR OF LEGISLATIVE AFFAIRS, NATIONAL OIL JOBBERS COUNCIL

Mr. **Bedell**. Our final witness is Mr. Robert Thornhill, the National Oil Jobbers Council. He is from the Thornhill Oil Co. of Fort Wayne, Ind.

We welcome you to our committee. It is 12:15; we would appreciate anything you can do to summarize or shorten your statement, and the entire statement will be entered in the record.

## TESTIMONY OF ROBERT J. THORNHILL, THORNHILL OIL CO., FORT WAYNE, IND.

Mr. **Thornhill**. In the essence of time, we will try and summarize as much as we can.

Good morning, Mr. Chairman and members of the subcommittee. My name is Robert J. Thornhill and I am an independent gasoline marketer from Fort Wayne, Ind. I am appearing today in my capacity as chairman of the National Oil Jobbers Council's Motor Fuels Committee.

The NOJC is a federation of 44 State and regional trade associations representing approximately 15,000 small independent petroleum product marketers.

I am very honored to appear before this joint subcommittee hearing to discuss H.R. 6722, the Small Business Motor Fuel Marketer Preservation Act. I am especially happy to have the opportunity to publicly thank Congressman Bedell, the chairman of the Antitrust Subcommittee, for his diligence in defending small business petroleum marketers from assaults on several fronts. Petroleum marketing is not a simple industry. It is highly complex with numerous interrelations between the various component segments.

Your knowledge of this industry, Mr. Chairman, comes not from the experts who reside in Washington and work in the bowels of the DOE or in the exclusive offices of oil company lobbyists. Rather, your knowledge has been acquired through direct communications with the small businessmen involved in this industry. The field hearings you conducted last summer on petroleum marketing practices provided a unique opportunity for many of our members. Not very often does a congressional subcommittee go directly into the field to learn about the problems plaguing a particular industry.

The problems the subcommittee heard discussed during those extensive field hearings are many of the same problems which still exist today. I understand that H.R. 6722 has been designed to address many of these problems. We are continuing to carefully analyze this legislation as to its specific impact on our members and its general impact on the gasoline marketing industry.

The importance of such a discourse is that two persons engaged in a dialog hear as well as listen. As you are aware, there is a critical difference between hearing and listening. The Department of Energy's Office of Competition conducted over 10 public hearings to determine the extent to which, if at all, refiners are engaging in predatory activity to the detriment of small business. These were hearings in the truest sense of the word because the Office of Competition failed to listen to anything we said.

The best example of this occurred in Fort Wayne where I personally provided the Office of Competition with detailed price surveys for the years 1976–78. These surveys showed that the average price differential from the wholesale rack to retail for various refiners ran from a low of 2.8 cents per gallon to a high of 5.1 cents per gallon.

Compare these differentials to my marketing costs which are 6.1 cents per gallon for a self-service station pumping 100,000 gallons per month or 4.1 cents for a self service station pumping 150,000 gallons per month. The Office of Competition brushed off this data by saying, "While periodic surveys of retail and wholesale prices are suggestive of longrun differentials, annualized information is more indicative of a strategic pricing plan."

Why did I and many other participants in the hearings waste our time? More importantly, why does the Government waste their money to conduct public hearings if they have already decided what they intend to do, regardless of the input and evidence submitted in the public forum?

Interesting enough, using the Office of Competition's own numbers one can prove that refiners sold gasoline below cost in Fort Wayne in 1978. Table 3–3 of the title III report shows that refiners made only 0.3 cent per gallon on gasoline. This is without depreciation being factored into the formula.

The Office of Competition may disregard depreciation because it is an accounting cost rather than an economic cost. But as a small businessman, I can tell you that replacement of station equipment is an economic cost, and any businessman who fails to factor depreciation into his operating costs will not be in business very long.

You will note below this that we point out that they used very little depreciation, only depreciation on equipment. In the essence of time I will not take you through all the figures, but you will note that if you just figure in depreciation on equipment alone into their figures, it shows, based on the Office of Competition's own study, that refiners actually operated their stations at a loss. The Office of Competition would further have us believe that refiners made more money through salary-operated stations than they would have by selling the gas at wholesale.

I will not continue to belabor the title III report before this subcommittee. The report is rapidly losing any credibility attributed to it by DOE. Rather, I would prefer to discuss the specifics of H.R. 6722 and the general philosophy NOJC and its members have toward this type of legislation.

NOJC approaches this legislation in conjunction with the pending decontrol of crude oil and all petroleum products by October 1, 1981. NOJC has historically been at the forefront of those groups critical of the existing price and allocation controls and seeking their removal from the marketplace.

This is somewhat ironic when one recalls that the title III report suggests that jobbers have been the chief beneficiaries of these regulations. This is difficult to understand in that some 6,000 jobbers have gone out of business since controls were imposed in 1973-74.

We are concerned, however, that immediate decontrol will cause extensive fallout among many small business gasoline marketers as refiners make certain free market, economic decisions with little regard to their consequences on small businessmen, the consumers they serve, or on competition in general.

NOJC has therefore favored elimination of the existing regulations to be replaced by appropriate transitional protective measures to preserve the competitive viability of marketers, to assure transitional access to supply, to protect against refinery domination of marketing and to prevent anticompetitive discriminatory pricing.

While this language certainly means different things to different people, even within our own membership, I think most reasonable men would agree that H.R. 6722 would address either directly or indirectly most of the concerns expressed in NOJC's position.

Our membership, however, remains uncertain that the only cure for a headache is decapitation. They do not fear a refiner's marketing ability. Even the title III report establishes jobbers as the most efficient gasoline marketers. Most of the innovation, improvements in efficiency and intense competitive pressures in gasoline marketing over the past 10 years are the result of small independent marketers being willing to try something different. Refiners would have to debate such innovations in their corporate boardrooms for weeks before making a decision to try something new.

We do, however, fear the refiner's access to other profits from upstream operations which will allow him to subsidize his inefficiencies in a way with which no independent marketer can compete. NOJC members therefore continue to seek a marketplace where everyone can start from the same starting blocks, receive compensation for functions performed, and let the most efficient marketer receive his economic rewards.

Since our final position with regard to refiner divorcement, as outlined in H.R. 6722, is inextricably tied to the real possibility of decontrol in the fall of 1981, the NOJC must keep one eye on the present and one eye on the future. The economic viability of motor gasoline jobbers is at stake in the months ahead.

While H.R. 6722 does address in great detail many of our concerns, like all public policy, it also raises several new concerns—concerns we have not been able to assess in the light of the continued viability of our segment of the industry.

For these reasons, I cannot at this time express either support of nor opposition to the legislation before you. NOJC would be pleased to continue working with this body and its staff to define and assist in alleviating what concerns we can.

To that end, I would like to make a few brief comments on the provisions of H.R. 6722 and their applicability to the current marketplace.

In the essence of time, I will not go through all of these in detail, but we would be happy to meet with the staff to discuss some of the problems we see.

I would like to point out three of the most important concerns that we have.

Section 3(c)(1) concerns NOJC members most. This rack pricing section inadequately recognizes the wholesale function performed by jobbers in the motor fuel distribution process. If jobbers are unable to receive a discount for their wholesale function, then all incentive to continue wholesale operations will be diminished.

Section 3(d)(2) concerning open supply for dealers could lead to an avalanche of consumer complaints from consumers who presumably pull into a branded station for branded product. If they prefer unbranded gasoline, they can obtain it at other stations. At a minimum, the legislation should define reasonable notice as more than just being able to post a sign on the dispensing pump.

NOJC's staff would be more than happy to discuss any of these suggestions with you and/or your staff. I appreciate the opportunity to be here this morning and I would be happy to answer any questions.

Mr. **BEDELL**. Thank you very much, Mr. Thornhill. I think you brought up some good points here, and we have not had time to go through all of them, but certainly I would appreciate if you would meet both with the majority and minority staff and go over these concerns. We will make your written statement a part of the record.

[Mr. Thornhill's prepared statement follows:]

## PREPARED STATEMENT OF ROBERT J. THORNHILL, MOTOR FUELS CHAIRMAN, NATIONAL OIL JOBBERS COUNCIL

### PREFACE

The National Oil Jobbers Council is a federation of 44 state and regional trade associations representing thousands of independent small business petroleum marketers. Members include gasoline and diesel fuel wholesalers, commissioned distributors of gasoline, gasoline reseller-retailers and a large number of retail fuel oil dealers. Members also wholesale or retail many other petroleum products, including kerosene, LP gas, aviation fuels and motor oils as well as residual fuel oil. Together our members market approximately 25 percent of the gasoline and 75 percent of the home heating oils sold in America under either their own private brand or the trademark of their supplier.

## STATEMENT

Good morning Mr. Chairman and members of the subcommittee. My name is Robert J. Thornhill and I am an independent gasoline marketer from Fort Wayne, Indiana. I am appearing today in my capacity as Chairman of the National Oil Jobbers Council's (NOJC) Motor Fuels Committee.

The NOJC is a federation of 44 state and regional trade associations representing approximately 15,000 small independent petroleum product marketers. (See Attachment I) We estimate that collectively, independent marketers sell nearly 40 percent of the gasoline and 85 percent of the home heating oil sold in this country annually.

I am very honored to appear before this joint subcommittee hearing to discuss HR 6722, the Small Business Motor Fuel Marketer Preservation Act. I am especially happy to have the opportunity to publicly thank Congressman Bedell, the Chairman of the Antitrust Subcommittee, for his diligence in defending small business petroleum marketers from assaults on several fronts. Petroleum marketing is not a simple industry. It is highly complex with numerous interrelations between the various component segments.

Your knowledge of this industry Mr. Chairman comes not from the "experts" who reside in Washington and work in the bowels of the DOE or in the exclusive offices of oil company lobbyists. Rather your knowledge has been acquired through direct communications with the small businessmen involved in this industry. The field hearings you conducted last summer on petroleum marketing practices provided a unique opportunity for many of our members. Not very often does a congressional subcommittee go directly into the field to learn about the problems plaguing a particular industry.

The problems the subcommittee heard discussed during those extensive field hearings are many of the same problems which still exist today. I understand that HR 6722 has been designed to address many of these problems. We are continuing to carefully analyze this legislation as to its specific impact on our members and its general impact on the gasoline marketing industry.

This careful analysis has been aided immensely by the cooperation of you and your staff. We very much appreciate the fact that the lines of communication run two ways between us and the subcommittee. Your Staff Director, Mr. Rosenberg, had the chance to meet with our membership to discuss HR 6722 and receive feedback from marketers throughout the country on this legislation. I can state, from our standpoint, that this was a highly useful exercise and one that I hope can be repeated on all legislation of major consequence in gasoline marketing.

The importance of such a discourse is that two persons engaged in a dialogue hear as well as listen. As you are aware, there is a critical difference between hearing and listening. The Department of Energy's Office of Competition conducted over 10 public hearings to determine the extent to which, if at all, refiners are engaging in predatory activity to the detriment of small business. These were "hearings" in the truest sense of the word, because the Office of Competition failed to listen to anything we said.

The best example of this occurred in Fort Wayne where I personally provided the Office of Competition with detailed price surveys for the years 1976–1978. These surveys showed that the average price differential from the wholesale rack to retail for various refiners ran from a low of 2.8 cents per gallon to a high of 5.1 cents per gallon. Compare these differentials to my marketing costs which are 6.1 cents per gallon for a self service station pumping 100,000 gallons per month or 4.1 cents for a self service station pumping 150,000 gallons per month. The Office of Competition brushed off this data by saying: "While periodic surveys of retail and wholesale prices are suggestive of long run differentials, annualized information is more indicative of a strategic pricing plan." (The State of Competition in Gasoline Marketing: Part I, The Effects of Refiner Operations at Retail, p. 60)

Why did I and many other participants in the hearings waste our time? More importantly, why does the government waste their money to conduct public hearings if they have already decided what they intend to do, regardless of the input and evidence submitted to the public forum?

Interestingly enough, using the Office of Competition's own numbers one can prove that refiners sold gasoline below cost in Fort Wayne in 1978. Table 3–3 of the Title III report shows that refiners made only 0.3 cents per gallon on gasoline. This is without depreciation being factored into the formula.

The Office of Competition may disregard depreciation because it is an accounting cost rather than an economic cost. But as a small businessman, I can tell you that replacement of station equipment is an economic cost, and any businessman who fails to factor depreciation into his operating costs will not be in business very long.

The only depreciation cost provided for a refiner salary operated station in Fort Wayne is in Table 3–4 entitled "Average Monthly Profit and Loss Statement, 1978."

That table lists depreciation at $369, a ridiculously low figure. This can be depreciation on station equipment only. Straight line depreciation on the service station cost, minus real estate, would be at minimum $1000 per month. Even accepting their figure, however, and applying 90 percent * of it or $328 to the operating costs found in Table 3-3 one finds that total operating costs for a refiner salary operated station are 5.0 cents per gallon rather than 4.6 cents. Since Table 3-3 lists the refiner gross margin as 4.9 cents per gallon, the average refiner had to be losing money on every gallon of gasoline. I am attaching to my testimony a revised Table 3-3 which factors in the depreciation costs as provided in Table 3-4 for each type of station in Fort Wayne. (See Attachment II) To add insult to injury, the Office of Competition would have one believe that refiners made more money through salary operated stations than they would have had they sold the gasoline at wholesale.

I will not continue to belabor the Title III report before this subcommittee. The report is rapidly losing any credibility attributed to it by DOE. Rather, I would prefer to discuss the specifics of HR 6722 and the general philosophy NOJC and its members have toward this type of legislation.

NOJC approaches this legislation in conjunction with the pending decontrol of crude oil and all petroleum products by October 1, 1981. NOJC has historically been at the forefront of those groups critical of the existing price and allocation controls and seeking their removal from the marketplace. This is somewhat ironic when one recalls that the Title III report suggests that jobbers have been the chief beneficiaries of these regulations. This is difficult to understand in that some 6,000 jobbers have gone out of business since controls were imposed in 1973-1974.

We are concerned, however, that immediate decontrol will cause extensive fallout among many small business gasoline marketers as refiners make certain free market, economic decisions with little regard to their consequences on small businessmen, the consumers they serve, or on competition in general. NOJC has therefore favored elimination of the existing regulations to be replaced by appropriate transitional protective measures to preserve the competitive viability of marketers, to assure transitional access to supply, to protect against refiner domination of marketing and to prevent anticompetitive discriminatory pricing.

While this language certainly means different things to different people, even within our membership, I think most reasonable men would agree that HR 6722 would address either directly or indirectly most of the concerns expressed in NOJC's position.

Our membership, however, remains uncertain that the only cure for a headache is decapitation. They do not fear a refiner's marketing ability. Even the Title III report establishes jobbers as the most efficient gasoline marketers. Most of the innovation, improvements in efficiency, and intense competitive pressures in gasoline marketing over the past 10 years are the result of small independent marketers being willing to try something different. Refiners would have to debate such innovations in their corporate boardrooms for weeks before making a decision to try something new.

We do, however, fear the refiner's access to other profits from upstream operations which will allow him to subsidize his inefficiencies in a way with which no independent marketer can compete. NOJC members therefore continue to seek a marketplace where everyone can start from the same starting blocks, receive compensation for functions performed, and let the most efficient marketer receive his economic rewards.

Since our final position with regard to refiner divorcement, as outlined in HR 6722, is inextricably tied to the real possibility of decontrol in the fall of 1981, the NOJC must keep one eye on the present and one eye on the future. The economic viability of motor gasoline jobbers is at stake in the months ahead.

While HR 6722 does address in great detail many of our concerns, like all public policy, it also raises several new concerns—concerns we have not been able to assess in the light of the continued viability of our segment of the industry.

For those reasons I cannot at this time express either support of nor opposition to the legislation before you. NOJC would be pleased to continue working with this body and its staff to define and assist in alleviating what concerns we can.

To that end, I would like to make a few brief comments on the provisions of HR 6722 and their applicability to the current marketplace.

1. Section 3(a)(2)(A) should allow the right of first refusal to anyone who is leasing the station from the refiner, not just the dealer.

2. Section 3(a)(2)(C) should be revised to provide more narrow parameters for the Federal Trade Commission to develop appraisal guidelines for the sale of a service

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*90 percent was chosen since gasoline sales made up only 90 percent of the revenue of the refiner salary operated station in Table 3-4.

station by a refiner. It should be made clear that that appraisal is conducted based on the value of the land for any use and not on its value as use for a service station.

3. Section 3(b)(1)(B) is written in such a way as to allow small and independent refiners to increase their direct market share above their refiner/sales ratio in 1978. For example, Refiner X sold 1 million gallons in Iowa in 1978, 300,000 gallons of which went through company stores. Our understanding of the intent of HR 6722 is that in any future year for every 10 new gallons brought into that state, three could be sold in company stores while seven would be sold to independents. Assuming Refiner X brought an extra million gallons into the state he could sell 810,000 gallons through company stores thus increasing his ratio to 40.5 percent. This is calculated as follows:

Refiner X sold one million gallons in 1978; he increased this to two million gallons in 1981. He can take the lesser of: (1) 50 percent of the excess of motor fuel sold by Refiner X in that calendar year above the amount of motor fuel sold through company stores in 1978 (2,000,000 − 300,000 = 1,700,000 × .50 = 850,000 gallons, a ratio of 42.5 percent or, and (2) The excess of the amount of gasoline sold in 1981 above the amount sold through salary operated stations in 1978 multiplied by the refiner sales ratio plus the amount of gallons sold through company stores in 1978 (2,000,000 − 300,000 = 1,700,000 × 30 = 510,000 + 300,000 = 810,000 gallons, a ratio of 40.5 percent).

4. Section 3(c)(1) concerns NOJC members most. This rack pricing section inadequately recognizes the wholesale function performed by jobbers in the motor fuel distribution process. If jobbers are unable to receive a discount for their wholesale function then all incentive to continue wholesale operations will be diminished.

5. Section 3(d)(2) concerning open supply for dealers could lead to an avalanche of consumer complaints from consumers who presumably pull into a branded station for branded product. If they prefer unbranded gasoline they can obtain it at other stations. At a minimum, the legislation should define "reasonable notice" as more than just being able to post a sign on the dispensing pump.

6. Section 3(f)(6) defines significant ownership interest as five percent or more in value of the outstanding stock of such corporation. An equal five percent standard is applied to partnerships and estates and trusts. This is a very low percentage. While we hesitate to suggest an alternative number for fear it would be at least as arbitrary as five percent, we recommend that this number be reconsidered.

7. One question left unanswered in this legislation is the sale of stations by major companies which are no longer allowed to operate company stores. While the legislation does not require a major company to sell these stations, if they were to do so these stations could be purchased by small and independent refiners or by other mass marketers such as Sears or J. C. Penney's. While I am unable to recommend a solution to this problem at the current time, I hope the subcommittees will evaluate this potential problem in the context of the total legislation.

NOJC's staff would be more than happy to discuss any of these suggestions with you and/or your staff. I appreciate the opportunity to be here this morning and I would be happy to answer any questions.

[Attachment I]

NOJC represents these member associations:

Alabama Petroleum Marketers Association
Arizona Oil Marketers Association
Arkansas Oil Marketers Association
California Independent Oil Marketers Association
Colorado Petroleum Marketers Association
Independent Connecticut Petroleum Association
Petroleum Association of Delaware
Oil Heat Institute of Greater Washington (DC)
Florida Petroleum Marketers Association
Georgia Oilmen's Association
Illinois Petroleum Marketers Association
Indiana Oil Marketers Association
Intermountain Oil Marketers Association
Iowa Independent Oil Jobbers
Kansas Oil Marketers Association
Kentucky Petroleum Marketers Association
Louisiana Oil Marketers Association
Maine Oil Dealers Association
Petroleum Council of Maryland
Better Home Heat Council of Massachusetts
Michigan Petroleum Association
Mississippi Oil Jobbers Association
Missouri Oil Jobbers Association
Nebraska Petroleum Marketers, Inc.
Independent Oil Men's Association of New England
New England Fuel Institute
Better Home Heat Council of New Hampshire
Fuel Merchants Association of New Jersey
New Mexico Petroleum Marketers Association

Empire State Petroleum Association, Inc.
North Carolina Oil Jobbers Association
Northwest Petroleum Association
Ohio Petroleum Marketers Association, Inc.
Oklahoma Oil Marketers Association
Oregon Oil Jobbers
Pennsylvania Petroleum Association
South Carolina Oil Jobbers Association
Tennessee Oil Marketers Association
The Texas Oil Marketers Association
Virginia Petroleum Association
Washington Oil Marketers Association
West Virginia Oil Jobbers-Distributors Association
Oil Jobbers of Wisconsin, Inc.
Wyoming Petroleum Marketers Association

National Oil Jobbers Council, 1707 H Street, NW., Washington, D.C. 20006 (202) 331-1198

TABLE 3-3

SELECTED OPERATING CHARACTERISTICS
1978

| OPERATING CHARACTERISTIC | LESSEE DEALER CONVENTIONAL | OPEN DEALER CONVENTIONAL | REFINER-OPERATED CONVENTIONAL | REFINER GAS ONLY | JOBBER GAS ONLY |
|---|---|---|---|---|---|
| Monthly Volume | 38,787 | 19,409 | 54,031 | 81,424 | 83,365 |
| Average Selling Price (ex sales tax) | 65.3 | 64.7 | 64.3 | 59.4 | 60.3 |
| Gross Margin | 7.4 | 6.8 | N.A. | 4.9 | 5.0 |
| Operating Cost-1 | 7.4 | 9.5 | N.A. | 4.0 | 4.0 |
| Net Margin-1 | 0.0 | (2.7) | N.A. | 0.9 | 1.0 |
| Operating Cost-2 | 8.7 | 10.5 | N.A. | 4.6 | 4.4 |
| Net Margin-2 | (1.3) | (3.7) | (1.1) | 0.3 | 0.6 |
| Operating Cost-3 | 8.9 | N.A. | N.A. | 5.0 | 4.5 |
| Net Margin-3 | (1.5) | N.A. | N.A. | (0.1) | 0.5 |

NOTE: Operating cost-1 and net margin-1 do not include station-related fixed costs while operating cost-2 and net margin-2 include all station-related costs, except depreciation. N.A. signifies information not reported because of potential disclusure of proprietary information. Operating cost-3 includes depreciation for the similar station provided on TABLE 3-4. Depreciation is calculated as the percentage gasoline is of total revenues.

Mr. **Bedell**. Mr. Tauke?

Mr. **Tauke**. As I indicated earlier this morning, we have not defined in this legislation the relationship between dealers and jobbers who own stations.

Do you have any specific comments relating to that?

Mr. **Thornhill**. I am sorry I wasn't here earlier this morning.

Mr. **Tauke**. What I said is in this legislation we have provided for rack pricing and for open supply provisions without addressing the question of how those relate to jobbers, particularly jobbers who own stations. What we are doing is providing a great incentive for jobbers to say, "I don't want to have some dealer in my station who is going to go to my competitor and buy a product. The only way I can protect against that is to operate that station myself," it, therefore, occurs to me that we have a problem with this legislation in that we are encouraging jobbers to get rid of independent dealers and to run and operate all of the stations themselves.

Do you have any observations?

Mr. **Thornhill**. I don't think I am as concerned with that point as I am the fact that I don't believe the bill fully recognizes, nor do some of the people who have testified, all of the functions that are performed by the jobber.

I do not see the bill encouraging jobbers to do away with independent dealers. I think the bill does not, however, give enough credit to the various functions that are performed by jobbers, which are many. Rather than in most businesses where you start out with, let's say, a wholesale price and you have discounts off of it, under this bill it would be the only type of legislation where you would start with the manufacturer's price and add on, which is the reverse of normal business practices in both our industry and in the oil business.

Mr. **Tauke**. Well, we could spend quite a bit of time talking about that. I don't see, though, why the rack pricing is such a problem for you. Are you saying if you are supplying me gasoline, that you cannot perform that function more efficiently and, therefore, do it at a cheaper rate than I can if I am doing it just for myself?

If I am an independent dealer, are you fearful that I am going to be able to go out and get my own supplies and in that way do it in a more efficient way than you could provide those supplies to me?

Mr. **Thornhill**. No, I am not concerned about that. I am concerned about the fact that I believe the bill will lead dealers to believe that they can skip all those functions and go to the rack, and they are forgetting the loaning of equipment, the investment that is in almost every dealer station, the maintenance normally provided by a jobber, the credit provided by the jobber, the business counseling provided by the jobber. The average dealer may say, "Gee, I can forget all of those and go to the rack," but those things still have to be performed by somebody, and most dealers are not in a position to perform them on one service station alone. It takes five.

Mr. **Tauke**. If you are a jobber and you own several stations and you have independent dealers and this legislation passes and the independent dealer goes out and buys from another jobber, are you going to continue to have credit arrangements for that jobber, or for that dealer? How do you think the typical jobber would respond to that kind of situation?

Mr. **Thornhill.** The typical jobber wouldn't provide credit arrangements for a dealer who is buying from somebody else, nor will they in any other business, not just in ours.

Mr. **Tauke.** Well then, what would a jobber do?

Mr. **Thornhill.** If this legislation passed, and if a jobber has an independent dealer who is taking advantage of all of let's say assistance, the brand, like we are branded, and the taking of credit cards, and then, though, goes out and buys gas on the open market and just has it marked on one little pump, that it is not, let's say, the specific brand of gasoline that he is representing, and then I have to spend my time policing to make sure that the gasoline is up to the right standard and making sure he doesn't take credit cards, et cetera, quite frankly, I would not hold that dealer in very high esteem, nor would I give him credit.

Mr. **Bedell.** Would you introduce your colleague?

Mr. **Thornhill.** This is Mr. Phil Chisholm with the staff of NOJC.

## TESTIMONY OF PHILLIP R. CHISHOLM

Mr. **Chisholm.** A good dealer is valued by everyone in the industry in terms of the function he can perform, as mentioned earlier. Mr. Houston, when he testified earlier, testified that he spoke with a number of jobbers, and the reason they went direct to their own stations, was to be competitive with the prices that certain refiner marketers had engaged in, and that is what created the jobber further integrating directly into retail. That has been the case in many, many sections of the country.

If a dealer wanted to go out and purchase a product from someone else, you have to then understand that the jobber who has made the investment in the station has to receive some return on that, and the only way he can then receive a return on that would be in his rents. It would force the jobber to be a landlord in essence, not a supplier of gasoline, and he would have to get whatever the fair market value for that station would be.

Mr. **Tauke.** There are lots of questions we could ask, but I know that the association has not taken a position on the legislation. I might just mention that some jobbers in my district are concerned. They are looking to the national association for some direction regarding this legislation. There are certain areas that this legislation does not address.

I would certainly hope that the jobbers association would begin to give serious consideration to this legislation, so that you can provide some assistance to the committee in coming up with fair and equitable legislation. Soon the train is going to be leaving the station.

I understand you have other interests that you are trying to bargain with, but the longer that goes on, the less able you are to be of assistance to us. I think the very fact that we have not even addressed the relationship between jobbers who own their stations and the people who lease those stations is indicative of the fact that your association has not really been paying much attention to what has happened in the drafting of the legislation.

I am not here to give a lecture, but it makes it very difficult for us to address the legitimate concerns of the jobbers when very few people from the jobbers association are giving very much attention to what is actually in this legislation.

Mr. **Thornhill**. Let me assure you that, No. 1, this is a very complex bill. Let me assure you, we have spent a lot of time addessing the issues and looking at the issues. We have had several meetings on it, and I assure you that we are in fact having more meetings on it tomorrow among jobbers, and we certainly are not skirting any input into the bill, and we certainly expect to continue working with the staff of the committee to discuss some of the things that bother us about the bill.

Mr. **Bedell**. Would the gentleman yield? I think they have been working with the staff, and I am not sure that the blame goes to one segment.

Mr. Thornhill has stated it pretty accurately, that the more you get into it, the more complex you find the issues. I think they have provided some suggestions here that it would be well for us to look at, and the gentleman from Iowa is probably correct, we maybe have not looked at this as carefully as we should have, at this one particular problem; but I think we have quite a few problems to look at. I don't think that necessarily means that we should feel discouraged in any way.

Mr. **Thornhill**. I would like to assure you, Congressman, we do not want that train to leave the station without us being on board.

Mr. **Tauke**. I don't want you to either. Maybe I have misperceptions, but from what I have seen of the testimony that has been given by the jobbers and from the discussions that I have had with staff, you have been very cooperative with the committee in answering questions. However, I don't think that the organization has been as helpful as it could be in seriously addressing the manner in which we can solve some of these difficulties.

Now, maybe that is because you haven't decided whether you want to be for the legislation or against it yet.

Mr. **Bedell**. I believe the particular problem that concerns the gentleman—and I am not sure that there was that much reason for the jobbers to be that disturbed over it—is a problem that needs to be solved, and they can help to solve it. It seems to me this is a problem.

Mr. **Tauke**. I think the problem is that you can't solve the problem simply by saying we are opposed to rack pricing, and if you get rid of the rack pricing, then we are OK. On that we are opposed to open supply, and if you get rid of that provision, then we are OK.

Mr. **Bedell**. I think the jobbers would agree with that; would you not, Mr. Thornhill?

Mr. **Thornhill**. Yes.

Mr. **Bedell**. You have already indicated some of the problems in Fort Wayne—you are in Fort Wayne, as I understand it?

Mr. **Thornhill**. Yes.

Mr. **Bedell**. With the DOE study. Apparently you feel it could have been a somewhat better study?

Mr. **Thornhill**. Yes. I am, I do not take that much issue with some of the data they gather, because much of the data they gathered actually supports the data that we gathered. By we, I mean various jobbers, but the conclusion that they came up with out of the data is amazing.

Mr. **Bedell**. The chairman agrees with you.

Mr. **Thornhill**. Thank you, sir.

Mr. **Bedell**. It has been requested that the record should be kept open for questions to be submitted to the witnesses by members who were unable to attend, and I presume there is no objection to that?

We thank you very much for being here.

At this time I want to thank all of those who are in the room who have testified today.

I can say personally that I think this has been a very constructive day. It would be amazing if we had legislation of this impact in which there were not concerns, and not things that needed to be addressed and possible changes that need to be made. I believe there has been a number of really significant contributions made by those who have been here today, and I think I can say accurately that the committee is most anxious to try to do whatever is needed to try to see that this legislation is drafted in the best possible manner. I think there has been a contribution by all of those who have participated today.

The subcommittee is adjourned.

[Whereupon, at 12:45 p.m., the subcommittee adjourned, to reconvene subject to call of the Chair.]

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# SMALL BUSINESS MOTOR FUEL MARKETER PRESERVATION ACT—H.R. 6722

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## WEDNESDAY, JUNE 4, 1980

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON ANTITRUST AND RESTRAINT OF TRADE ACTIVITIES AFFECTING SMALL BUSINESS, OF THE COMMITTEE ON SMALL BUSINESS, AND THE SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCE OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,

*Washington, D.C.*

The subcommittees met, pursuant to notice, at 9:30 a.m., in room 2359-A, Rayburn House Office Building, Hon. Berkley Bedell (chairman of the Subcommittee on Antitrust and Restraint of Trade Activities Affecting Small Business) and Hon. James H. Scheuer (chairman, Subcommittee on Consumer Protection and Finance) presiding.

Mr. **BEDELL**. This morning we resume hearings on the Small Business Motor Fuel Marketer Preservation Act, H.R. 6722, and related bills. These hearings are being conducted jointly by the Small Business Subcommittee on Antitrust, which I chair, and by the Interstate and Foreign Commerce Subcommittee on Consumer Protection and Finance, chaired by Congressman Scheuer.

Mr. **SCHEUER**. I just flew in from New Delhi, and I think I get the door prize for having come the farthest.

Mr. **BEDELL**. Congressman Scheuer, if you have a statement, we hope you will give it in English rather than Indian.

Mr. **SCHEUER**. Well, I actually have a long statement in Hindi, but for the convenience of all I will put it in the record and let the Library of Congress translate it.

Mr. **BEDELL**. Thank you, Mr. Scheuer.

Mr. Tauke.

Mr. **TAUKE**. Mr. Chairman, I have no statement this morning.

Mr. **BEDELL**. Mr. Skelton.

Mr. **SKELTON**. I have no comments.

Mr. **BEDELL**. Mr. Leach.

Mr. **LEACH**. No comment.

Mr. **BEDELL**. Our first witness is H. Laurance Fuller, president of Amoco. I should say when I was in school in Spirit Lake, Iowa, probably the person I most admired was our superintendent of schools, Mr. Harry Elsley. I find Mr. Fuller is Harry Elsley's son-in-law—you are married to his daughter?

## TESTIMONY OF H. LAURANCE FULLER, PRESIDENT, AMOCO

Mr. **FULLER**. No; I am his grandson.

Mr. **Bedell**. If you learned from Mr. Elsley some of the qualities he had, it certainly would speak very, very well for you, Mr. Fuller. We are glad to have you here with us, and look forward to your testimony.

Mr. **Fuller**. Mr. Chairman, my name is H. Laurance Fuller. I am president of Amoco Oil Co., headquartered in Chicago, Ill. I am appearing here today primarily to express the views of the American Petroleum Institute and the Rocky Mountain Oil and Gas Association.

With your permission, I will not read the written testimony in its entirety, but I will emphasize its main points briefly.

First, we are as interested in the future of dealers as you are, and do not share the committee's pessimistic view about the viability of dealers, now or after decontrol. In fact, dealers remain the core of our business, and elimination of controls will improve the lot of the dealer relative to other retail operations.

Second, it is certainly true that the number of dealers has declined, but this is due to changes in consumer preference and Government regulations. Changes in marketing methods are a response to these trends. The main changes to which I refer are the shift to self-serve and the change in nongasoline marketing at service stations, both of which adversely affect the traditional full-service dealer.

Third, the committee's concern about company-operated service stations is misplaced, since this is only a very minor factor in a rapidly changing market.

Fourth, diversity of marketing approaches is in the customer's interest. My company chooses to market almost exclusively through dealers—others have a mixture. The low-cost operation of smaller marketers puts competitive pressure on all of us. This diversity should be encouraged.

Fifth, we are concerned about mandated rack pricing. Rack pricing will injure the jobber, as it will not allow the jobber to recover his costs and a return on his investment. In the long run, it may also reduce branded marketing, which will injure the dealer segment.

In summary, petroleum marketing is an extremely complex business. It is composed of many different types of sellers, from major oil companies to small and independent refiners, to chain marketers, to jobbers and dealers, each with different economics, marketing through a wide variety of facilities ranging from huge car-care centers to self-service facilities and rural stores with a few pumps. Buyers have also demonstrated a wide variety of needs and preferences, from those who prefer the service options of a major branded full-service station, to those who will buy solely on the basis of price. The vast majority of buyers and sellers are small business people and individual consumers. This proposed legislation, at best, might artificially preserve the viability of a few dealers, clearly at the expense of consumers, and less obviously, but equally importantly, at the expense of other small businesses such as jobbers and small refiners. At worst, it could cause the decline of branded marketing, to the detriment of the very segment of the business you seek to protect, the dealer. I urge you to seek less regulation, rather than more, to the benefit of all who are involved in the sale and purchase of petroleum products.

I would urge the committee to allow the market to perform the complex task of adjusting to the problems confronting this segment of the industry. More legislation at this time will hurt rather than help the consumer.

That ends my remarks.

Mr. **Bedell**. Your prepared statement will be made part of the record.

[Mr. Fuller's prepared statement follows:]

### Prepared Statement of H. Laurance Fuller, President of Amoco Oil Co., on Behalf of the American Petroleum Institute

Mr. Chairman, my name is H. Laurance Fuller. I am President of Amoco Oil Company headquartered in Chicago, Illinois. I am appearing here today primarily to express the views of the American Petroleum Institute.

We oppose H.R. 6722. We believe that Federal intervention in the petroleum market place has done more harm than good to the public and all segments of the industry and has created more problems than it has solved. We do not believe that additional legislation will do anything but create more problems.

The Committee has expressed concern over the future of the service station dealer when existing regulations expire in September of 1981. We do not believe the expiration of controls poses any threat to the continued viability of competent dealers. On the contrary, we believe the elimination of government intervention will enhance business opportunities for the dealer. In my opinion the best way to determine how the dealer will fare when controls are removed is to examine how the dealer fared before the government got involved in the petroleum market place. Competent dealers did well then and will do well in the future—if they are allowed to adapt to the changes that have occurred in the market. Simply stated, we believe that government intervention has prevented the market from working to the detriment of the dealer and that the market, if allowed to function, will allocate supplies, will provide motor gasoline to the public at the least cost, and will permit the dealer to continue as an integral part of the distribution system.

This bill is being considered at a time when Congressional and Administration policy has moved toward less, rather than more, regulation. Regulatory reform is based on the recognition that the consumer receives the lowest priced goods and services when suppliers respond competitively to market demands. Regulations aimed at protecting individual competitors, rather than the competitive process, are anticonsumer. We believe that this proposed legislation is unnecessary, out of step with national policy and contrary to the interests of most small, independent businessmen which it supposedly protects.

It is certainly true that the dealer population has declined over the last several years. This is due to fundamental changes in what the customer wants, and to government regulation. Changes in marketing methods are a response to these forces and legislation which ignores them cannot be in the consumer interest. The marketing component of the petroleum industry has gone through a wrenching change as a result of the Arab oil embargo in 1973 and the subsequent price hikes by the OPEC countries. As the result of higher prices, smaller cars, and the cumulative impact of various government programs, the amount of gasoline being sold has begun a downward trend which will continue in the years to come.

Consumer purchasing patterns have changed. There has been a trend to high volume stations as more and more consumers look for their gasoline at the lowest possible price. This shift in consumer purchasing patterns has affected all petroleum marketers, including refiners, chain operators, jobbers, independent marketers or dealers. Each marketer has attempted to adjust by making changes in operations. Service station dealers have had the most difficulty in adjusting to the shift in customer demands, primarily due to government regulations. Yet, many dealers have made adjustments and have increased their gasoline volume by going to self-service or to split-island service to accommodate the changing and varied needs of their customers.

Gasoline sales have traditionally accounted for only about 50 percent of a dealer's income. The non-gasoline portion, consisting of the sale of tires, batteries and accessories, tune-ups, lube jobs, and other motorist products and services, made up the balance. Consumer demand in this portion of a dealer's business has also changed as more motorists become "do-it-yourselfers". Also, the complexity of the modern automobile has resulted in less routine maintenance for dealers as well-financed, specialty chain stores have come into the market to replace mufflers, work on transmissions and do tune-ups. Chains such as Sears, Penneys, Midas and Aamco gross millions of dollars of revenue per year from business which traditionally has been a significant contributor to dealers' income. Despite these developments, many dealers have been able to adjust and to remain profitable by directing their efforts to satisfying changed customers needs. But it is these trends that have led to a decline in dealer population.

Rather than dealing with these fundamentals, this bill has concentrated on increased company operation of stations, only a very minor factor in the market. The practice of company operation of service stations on a salaried basis by major oil companies varies from company to company and has varied for individual companies from time to time. Amoco, for example, had a large number of commission agents, who operated company-owned terminals and bulk plants and supplied both service station dealers and consumers. In 1974, Amoco converted these agents from employees to jobbers, sold them the company's facilities and created approximately 3,000 new, independent businesses from what had been a significant company operation. Other companies have done just the opposite. Any student of the marketing practices of the various major oil companies can come to but one conclusion. There is no pattern. Each company's marketing strategy differs in one aspect or another and is constantly changing. Recent Department of Energy figures indicate that some of our competitors have recently increased the number of company operated stations while other competitors have decreased the number of such stations. In fact, the recent DOE Title III study which is the only comprehensive, accurate study of the market place, concludes that there is no mass movement toward company operations by major refiners.

Directing my attention specifically to the provisions of H.R. 6722, I believe that this bill, if enacted, will compound existing problems which have been created by government regulations and that the cost of further government intervention will be paid by the consuming public. This bill is an attempt to insulate the service station dealer from competition by prohibiting direct participation in the market by the major oil companies and by restricting direct participation by all other refiners. The bill also contains mandated rack pricing and open supply provisions.

The representative of the Office of Competition of the Federal Trade Commission testified on May 20, that retail divorcement eliminates "an entire class of competitors", and questioned whether such drastic market intervention was warranted. In his opinion, a balanced market should be made up of major oil companies, refiner-marketers and other independent marketers. We concur.

Diversity in marketing strategies allows for competition, gives the customer the choice, and leads to the most efficient solutions for each company. Measures that inhibit diversity or impose one procedure to the exclusion of all others will ultimately hurt the consumer. Left to itself, the marketplace will sort out the most efficient and economical marketing strategies. Legislative and regulatory interference simply inhibits the process by arbitrarily providing protection for one group of competitors at the expense of other competitors. For example, earlier testimony before this joint hearing has disclosed that the divorcement provisions concern not only the Office of Competition but also independent refiners, private brand marketers and chain retailers. The non-branded independent retailers support divorcement for the major oil companies but do not like the rest of the bill.

The jobbers are most concerned about the mandated rack pricing provision and its impact on their future. They also are concerned that the open supply provision will lead to an avalanche of consumer complaints when customers drive into a branded station and are offered unbranded gasoline. They wonder whether "open supply" will be the "death knell" of branded marketing.

We believe that the jobbers' fears are well bounded. Jobbers are the wholesale distributors of the refining industry. A legislative requirement that jobbers be charged the same price as dealers would threaten, if not destroy the ability to provide profitably the transportation, secondary storage and other wholesale functions whose value has been recognized historically by both the market and the law. What H.R. 6722 overlooks is that jobbers are small business people, too. In an attempt to provide artificial barriers to competition for one group, the potential damage to jobbers and other small businesses has been ignored.

I suggest that the legislation which is already on the statute books is more than adequate to preserve competition in the industry. These laws include the Sherman Act, the Clayton Act, the Robinson-Patman Act, the Federal Trade Commission Act, the Petroleum Marketing Practices Act, as well as a host of federal and state laws concerning labeling, misbranding, vapor control, and franchise rights.

In summary, petroleum marketing is an extremely complex business. It is composed of many different types of sellers, from major oil companies to small and independent refiners, to chain marketers, to jobbers and dealers, each with different economics, marketing through a wide variety of facilities ranging from huge car care centers to self-service facilities and rural stores with a few pumps. Buyers have also demonstrated a wide variety of needs and preferences, from those who prefer the service options of a major branded full-service station, to those who will buy solely on the basis of price. The vast majority of buyers and sellers are small business people and individual consumers. This proposed legislation, at best, might artificially preserve the viability of a few dealers, clearly at the expense of consumers and less obviously, but equally importantly at the expense of other small businesses such as jobbers and small refiners. At worst, it could cause the decline of branded marketing, to the detriment of the very segment of the business you seek to protect, the dealer. I urge you to seek less regulation, rather than more, to the benefit of all who are involved in the sale and purchase of petroleum products.

I would urge the committee to allow the market to perform the complex task of adjusting to the problems confronting this segment of the industry. More legislation at this time will hurt rather than help the consumer and the dealer.

That completes my statement. I will be happy to respond to any questions you may have.

Mr. BEDELL. Mr. Scheuer.

Mr. SCHEUER. You are apparently opposed to this legislation. I am chairman of the Consumer Committee.

Can you fine-tune your thinking a little bit? You said this legislation would be at the expense of consumers. Can you elaborate on that? How would this affect consumers?

Mr. FULLER. Over the last 10 years, there has been a major shift from the full-service-type operation toward self-serve. There has also been, as you know, over that period of time——

Mr. SCHEUER. What percentages of all pumps?

Mr. FULLER. Ten years ago, very nearly zero, and currently in the range of 50 percent nationwide. I am not talking about stations where no service is, but also self-service pumps on what we call split-island service. It is rapidly approaching 50 percent.

One of the reasons for that, some people have said that it is because the price of gasoline has gone up and people are more price conscious, and I am sure there is something to that. But it is also, I think, evidence of a trend that is occurring in lots of different areas toward people doing things for themselves. There is as much psychology in that as economics. That trend is one that obviously you have to respond to if you are to stay in business. I think that change more than anything else has caused the change in the number of dealers in the mix and type of facilities we have out there.

We do market research all the time. We spend a lot of money on that. The consumers are split into three groups, one dealing almost solely with the a branded operation, 25 percent, the other group will deal only with unbranded operations on the basis they believe, and this is generally true, that the economics of that and the price of gasoline are lower. Then there are the 50 percent in the middle who move back and forth. Various marketers are looking at it in different ways as to branded and some unbranded. That is the major factor in causing reduction of dealers.

Mr. SCHEUER. In my community when I go out to get gas, there is an Amoco, Mobil, they are all branded. How would I find an unbranded pump in my community?

Mr. FULLER. I am not familiar with your neighborhood, but as I travel around the country, I do not think there are any neighborhoods where there are no service stations selling under a no-brand. That business has grown very expansively.

Mr. SCHEUER. How much per gallon is the no-brand?

Mr. FULLER. The difference between the branded and unbranded?

Mr. SCHEUER. Yes.

Mr. FULLER. The prices at the pump are more affected by regulations. It is hard to generalize, but it is fair to say in an unregulated environment, sometimes 2 to 4 cents.

Mr. SCHEUER. Are the unbranded pumps putting gas in people's car that is inferior to the branded? What are people getting for that 3- or 4-cent differential?

Mr. FULLER. First of all, with respect to the quality of gasoline, it is hard to generalize. In most cases, it would probably be the substantial equivalent with respect to generic products such as leaded regular.

On the other hand, with respect to an unleaded premium product, which up until recently there was only one company supplying that product, very substantial quality difference there. There are more subtle differences in terms of octane, but there are other quality aspects of gasoline, not the least of which is to what extent has it been adulterated with water, starting characteristics—the important thing is generally, in a broad sense, product quality and control in our mind is of the utmost importance. Our customers expect us to provide a uniform product, and we do attempt to do that.

Mr. SCHEUER. Do you generally get those characteristics in a branded product or do they have the same degree of quality?

Mr. FULLER. With respect to a branded product, you would have less variability. In the case of our own operation, we have a constant sampling situation going on, and we do have them, so in our case, there is no absolute instance of no difficulty, but we recently found haze, cloudiness in Florida. The reason is because we were putting alcohol in the gasoline to increase the octane in it, so we traced that down.

The tendency would be for a more uniform quality when you spend that kind of money to assure the quality.

Mr. SCHEUER. I think I might have interrupted you before as to how it affects customers.

Mr. FULLER. There are the 50 percent in there who want the choice of being able to go into a branded operation, they want the service, somebody to check their oil, want to deal with a credit card or price, or what have you. That is in the consumer interest. To the extent you eliminate company stores, to the extent you have rack price, you are going in the direction of reducing that diversity, and that is caused by the consumer preference in the first place. That is why I would say it would not be in the interest of the consumer. The dealer operation deals only with a small segment of the operation. To the extent you injure other segments of the business, you are not keeping in mind those people who want to deal with that segment of the business.

This bill would limit the expansion of smaller refiners, a very vital force in the marketplace in terms of price and the service given.

Mr. SCHEUER. Have you any statistics or studies to prove that?

Mr. **Fuller**. The best way to prove that is the look at the growth of the business over that period of time. I do not have that data memorized, but there is no question about the fact that the independent segment of the business, which tends to be a low-cost operation, which tends to not be branded, has grown at the expense of the majors over a period of time. In fact, the majors have learned a great deal in terms of what the consumer wants. It takes somebody new to come in and teach you there may be other ways for you to do your business.

Mr. **Scheuer**. Thank you very much.

Mr. **Bedell**. Mr. Tauke.

Mr. **Tauke**. Thank you, Mr. Chairman.

Mr. Fuller, perhaps for a moment we could take the bill in three parts, divorcement, rack pricing, and open supply. Let us talk first about the divorcement section. I take it from your testimony that you believe there is no merit to the divorcement portion of the bill, primarily because you believe it will lessen competition. I think our subcommittee has developed this legislation from the standpoint that it is very difficult to have fair competition in the gasoline marketing business when an individual station owner and operator is trying to compete with the company that is also supplying him.

How do you think we can have fair competition when major companies who are supplying dealers are also in the gasoline marketing business?

Mr. **Fuller**. The first question you need to ask yourself is whether it is in fact a common occurrence for there to be direct competition between a dealer operation and a company operation of the same brand.

I think you will find that is a very uncommon occurrence, and in the case of our company, although as we have said we have very few company operations, you would not find a situation where you were in the same competitive area with a company operation and also with a dealer operation.

The other important point to make, I think, is that the oil company has a very major investment in the dealer, both in terms of the dollars associated with the real estate of that location and also in terms of the dealer himself, in terms of the training costs associated with creating a viable economic entity. It would not be in the interest of oil companies to drive that person out of business when in fact the interest of the company would be to make sure as best we could that he flourishes. The reason he would not flourish would have to do with the market forces I mentioned.

Mr. **Tauke**. You can say as president of Amoco that you do not have a policy of having company-owned and operated stations in direct competition with leasee dealer stations. But I think it would be difficult to say that the same practice holds true for many of the other companies we have been studying.

Mr. **Fuller**. Again, there is no question about the fact that there are companies who have company-operated stations and dealers, the question is whether those are in competition, and also whether there is injury to competition associated with having both those operations.

Mr. TAUKE. As to Sohio, there is no competition, because they have put all the dealers out of business.

With the practice as it is at the moment, is it possible to have competition between a dealer who is supplied by a company and that company? Is that fair competition?

Mr. FULLER. Absolutely.

Mr. TAUKE. How can it be?

Mr. FULLER. The dealer is running the kind of business that will allow it to be competitive. He has his sorts of customers that he deals with. Most of the company operations, at least in my experience, these tend to be pumper-type operations, not generally dealing with the same population as to the spread of customers I mentioned before, so I would argue there is really no injury to competition in that sense.

What I argue is that it certainly cannot be true that a 3,000 increase or thereabouts in the number of company-operated stations nationwide is the major factor causing something in the range of 30,000 to 80,000 less dealers over that period.

The fundamentals are the competitive factors plus Government regulations, which is an equally strong detriment to the dealer——

Mr. TAUKE. I am aware of that, and strongly advocate the deregulation of gasoline. When we have deregulation of gasoline, what do you think will happen? Do you think Amoco will continue to supply the rural areas? Will there be great price differential for example in areas close to refineries versus those removed from refineries?

Mr. FULLER. With respect to what will happen to the dealers, our experience is that it has been extremely difficult, in some cases impossible, to receive from the DOE permission to open a new station and put a dealer in it or make a substantial modification to an existing station. I can only speak to our particular plans. We would expect our service station operation, whether company operated or jobber, to still continue to decline. There are still too many service stations out there for the reasons I have stated.

Mr. SCHEUER. Hold the phone. That is an important statement you have made. I think you have said something very important. There are too many service stations out there.

I do not want to interrupt——

Mr. TAUKE. Go ahead, Mr. Scheuer.

Mr. SCHEUER. That is the dilemma which faces us. We want to save the small entrepreneur, and Berkley Bedell has been as thoughtful and enlightened a leader as this Congress has had as to the small business entrepreneur, that is why we are here. I am a New York kid, but I have a bumper sticker on the car "Save the Family Farm." When we do this by restraints, how much do we penalize the consumers?

I take it what you are saying with unrestrained competition, those small stations will fall down the wayside?

Mr. FULLER. Yes.

Mr. SCHEUER. How will that affect consumers in terms of price, services, repair, and maintenance services and in terms of convenience and availability of gas?

Mr. FULLER. It is the consumer who is determining that.

Mr. SCHEUER. Wait a minute; hold the phone.

It may be the vast number of consumer decisions by the millions that say that guy in this corner will go bankrupt, but it does not mean it is in the consumer interest that this guy on this corner go bankrupt. A century ago we had a clear pattern when John D. Rockefeller started out, and he engaged in cutthroat competition, I am sure you read the book, "The Robber Barons," where they engaged in savage competition; that was good for consumers. But as soon as they knocked the smaller chaps out who could not take the punishment and they achieved monopoly power, they used that monopoly power and the price at the pump went up.

Mr. **Fuller**. The smaller fellow is not disappearing, but what I mean by the consumer deciding is this, we tend to talk about gasoline in terms of self-serve and getting your cost down so the cost could be competitive on the street. Equally important, due to changes in technology of the automobile, due to the growth of another market tier, the muffler operation, et cetera, certainly in the consumer's interest, those people run a fine business, true of Sears, Montgomery Ward, they are getting into the business which has been 50 percent of the dealer. There is a wide diversity there, heaven knows the muffler business is a detriment to the dealer, but not to the consumer. It is easy to say I am going to be a dinosaur and will have 10,000 businesses out there and 10 years from now, you look back and you have no business. I have to maintain a viable business so there will be a branded option for the consumer.

Mr. **Scheuer**. I yield back to the gentleman. I apologize for taking so much time.

Mr. **Tauke**. I was in Cedar Rapids, in my district, and purchased branded unleaded gasoline at the price of $1.30 per gallon. Across the street in competition with this branded dealer is a company-owned and operated station of the same company. This dealer had purchased his gasoline from the jobber who represents the area for $1.21. The price at which the gas was being sold at the company-operated store was $1.24.9. Now does this happen if the competition is fair between dealer and company-operated stations? How can a dealer make a go under these circumstances?

Mr. **Fuller**. You are talking about a jobber situation, which makes the arithmetic more difficult. But I think you have to keep in mind that right now, more than anything else what controls the situation that you are describing, there is Government regulation. The company operation has a maximum at which it can sell. I have not the slightest doubt the number which you are referring to would be at the maximum. The jobber and the dealer have a maximum——

Mr. **Tauke**. Let me interrupt you. If the dealer is only getting a 9-cent margin, and if the jobber took the maximum margin and if the company-owned station were taking its maximum, the price differential would be close but certainly not identical. If the company operation was paying the same price for gasoline to begin with, that would mean the company operation was taking a 7- or 8-cent margin. Something less than the dealers.

Mr. **Fuller**. The point at which they sell is subject to a maximum, associated with the daily regulations. If you could tell me whether or not they were pricing below that, I could respond better to your question. I do not know enough about the facts, but the key, as we look at the economics of the situation, there is no question about the fact that it is possible for a company operation to be profitable. But there are costs associated with it and it is not by any means a large profit. It is a reasonable rate of return. We look at those economics and say the economics are not good enough for company operation, we would rather have an independent dealer in there dealing with the problem. I would have to admit to you part of that problem has to do with history. We think we are pretty good in dealing with that system, some think they are pretty good in company operations. In another part of our operation, LP gas, similar with fertilizer. We have difficulty in competing because we are not good in keeping our costs down. But I assure you it is a marginal choice and does not have overwhelming economics.

Mr. **Tauke**. I appreciate the indulgence of the chairman, and since this is a major company——

Mr. **Fuller**. The only one you are going to get.

Mr. **Tauke**. There are a number of us on the committee who feel there is some value to brand. If we change the open-supply provision to permit limited open supply during times of shortage, but otherwise allow the dealer to buy through the normal purchasing avenues, would you have a major objection to the open-supply provisions?

Mr. **Fuller**. Well, I think one would have to further define what you mean by "open supply." I would first of all observe what you have just said goes beyond our company's policy, that is, we do not require our dealers right now to buy our product. The only thing we require is if they have the brand up there, that we do in fact supply that product, because of the obligations we have to the customer as to quality. There are examples in our system of dealers who take advantage of it; there are not many.

In terms of short-supply situation going elsewhere, are you suggesting he be able to sell material he got from somewhere else under our brand?

Mr. **Tauke**. There would have to be some kind of notification to the public.

Mr. **Fuller**. Again, one ought to make sure you have a problem before you try to deal with it with legislation. The dealer has the option under our dealer lease today, that if he properly informs the public, as you have said, that he may change the designation on the pump. Other companies do not do that, and I can understand why they do not. As a matter of fact, there is a certain amount of exposure with respect to your being liberal on that. The customer has no idea, if you put something across there that says this is Joe's gasohol, the customer does not perceive this. Customers write to us and day after day and say we have trouble with water in the gasoline, or your employee—which he is not—has done this to me.

I have to be responsible for that operation. The fact there is a small sign saying this is not our product is of no help. I have to have some control in what is sold in terms of quality or I lose in the long run the advantages of the brand we have as to what people can expect when they go into that station. The reason we are concerned, since we are trying to deal with the 25 percent who deal with branded stations plus those 50 percent who wander back and forth, I have to have a reasonable guarantee of quality under our brand. If I cannot sustain that, the option as to what our representation will be, then I say this is in derogation of the system and ultimately the dealer.

Mr. **Tauke**. Do you as an individual company or do you know if other companies enter into agreements with major marketers for gasoline that would have a price that would be less than that normally charged the jobbers?

Mr. **Fuller**. Major marketers, would you define that?

Mr. **Tauke**. A regional and national marketer of gasoline, and that marketer is obviously getting product in many instances from some of the major companies. When you enter into contracts with that kind of marketer, is it possible for those prices to be below the price you would charge a jobber.

Mr. **Fuller**. That is possible, depending on what the market situation is at a given time. It is very hard to judge, because generally speaking, if we are to make in our particular case, the contract implies a long-term arrangement, but if we should have an excess of gas in our system and we wish to dispose of that, we might very well sell it to one of these companies to whom you refer or a broker. We would have to view the competitive situation in that market at that time. Generally you are talking about something the size of a pipeline tender, a barge, or a tanker.

It is very easy to determine the price at which that is going at any particular point in time.

Mr. **Tauke**. And it could be lower.

Mr. **Fuller**. It could be, except if we were making a decision at that time we had excess gasoline for the same class of trade at the same location, obviously we would have to pay attention to the situation. But it is possible a pipeline tender from Texas would be less than a transporter of gasoline in New York City, you bet.

Mr. **Tauke**. Thank you.

Mr. **Bedell**. Mr. Skelton.

Mr. **Skelton**. You mentioned in your opening comments, Mr. Fuller, that the present situation partly is due to Government regulations. I realize you have touched on it somewhat, but I would appreciate you enumerating for us though, the various regulations that do cause the problems in the present situation, you seem to emphasize that.

Mr. **Fuller**. Do you have a time element on my response to that?

Mr. **Skelton**. Run down A, B, C, D, and E.

Mr. **Fuller**. Certain segments of the business, most prominently the jobber segment, are able to either put up a new service station, take over somebody else's service station or modify one they have and get additional supply from DOE. They direct us to supply them, whereas the dealer segment has had a great deal of difficulty doing that.

The jobber is not required to downward certify. If the station goes out of his city, he can keep it in his trade area.

We cannot do that with a dealer. So if we want to close down three service stations in downtown Chicago where we do not have the business any more and open up hopefully one, in an area that is growing either in or out of the city, we cannot move that volume to that station. More broadly, one of the things causing difficulties with the dealer is the change in the relationship between the dealer and the customer that has been caused by regulation. It used to be in the days when prices were more regulated by competition, the prices would be within a reasonable line. When we get into the entitlements program, our company happens to be the largest payer by far. When you get into the Alaskan North slope entitlements which makes us 2½ cents a gallon higher in price, then we have a much higher price out there in the market price to our dealer. He is less competitive. His customers are irritated by that and that relationship with the branded operator gets broken.

It is also true that the price regulation of company-operated stations has caused those stations generally to be lower in price, in my judgment, than they otherwise would have been in fact when that regulation changed recently, I think that changed some way. The reason these stations are attractive to the consumers is because we have been forced to price low. The stations on the Indiana Toll Road are the lowest in Indiana because we have to price according to a DOE formula.

Mr. **Skelton**. In other words, you named basically three?

Mr. **Fuller**. Entitlements, upward certification. The price rules generally do not permit the kind of pricing flexibility which allows us to respond and that hurts the dealer as well as ourselves.

Mr. **Skelton**. What problems, if any, do you see in the expanded use of gasohol in the American petroleum industry?

Mr. **Fuller**. There are some technical problems which I will pass, having to do with the precautions you need to take with the 10 percent ethanol, problems to avoid water and what have you, and water in certain parts of the engine which we may be able to deal with. That is the reason for the tests we have going on in Iowa and other places. The main reason is cost, supply, and economics. The question is where there can be a large—I presume, you are talking specifically about gasohol derived from biomass?

Mr. **Skelton**. Yes.

Mr. **Fuller**. In terms of the amount of ethanol which can move itself in the system, it will be rather small as against the total gasoline market, which did not mean there would not be geographic areas where it would not make sense.

Mr. **Skelton**. Such as Iowa, Kansas?

Mr. **Fuller**. Yes, there will be other areas. Alcohol as a whole is different. I think methanol from coal some day, way down the road may be something that will be major.

Mr. **Skelton**. How much cooperation can we expect from the oil companies in this country to assist those technically in the Midwest, who are beginning and working on gasohol projects. This concerns me, I get the feeling that the oil companies are dragging their feet. Is this correct?

Mr. **Fuller**. Well, I do not know why you would feel that. There are some oil companies that have announced more ventures in this area. As far as our company, the problem is price and quantity we are able to get ahold of to take care of our tests. We are paying $1.80 for ethanol and the economics are tough. We have a policy on gasohol which is written. We have a task force in terms of what its future should be. We are talking to several companies, large and small, in my own company's case, I would not want to oversell as to our volume potential, but we certainly have a supply problem. We have been low in our allocation, for example.

Mr. **Bedell**. Will the gentleman yield?

Mr. **Skelton**. Yes.

Mr. **Bedell**. I think there is an important point to be made. There is a tremendous difference in the attitude as to what various companies have been doing.

On April 30, Amoco pumped 30,000 gallons of gasohol from Sugar Creek. We do appreciate the fact this proves we can move gasohol through our pipelines and certainly we would be remiss if we did not commend you for that.

Mr. **Fuller**. You are all aware of the energy imbalance there but the technology should be worked on and we should take advantage of any resources we have.

Mr. **Bedell**. They cannot pass a bill over at the Agriculture Committee without a quorum. Mr. Skelton and I must be excused for a moment or two to make our presence known. Mr. Scheuer will take the chair.

Mr. **Scheuer**. How does diesel fuel fit in?

Mr. **Fuller**. It will probably be very substantial, there is a question as to diesel emissions, GM is fully committed to diesels and other companies both here and abroad are interested. There is a question as to what DOE will do as to particulate emissions from diesel. We should move toward diesel fuel, subject to certain limits, there is not very much question as to the oil community being able to provide that. If there is adequate hydrocarbon, the diesel fuel can be made available. We are looking at the need in between 5 and 10 years at maybe all our stations, maybe selected stations, depending on how fast things move, the possibility of replacing the regular lead with diesel. We already have some in what I would call Mercedes Benz neighborhoods, but as things move they will change.

Mr. **Scheuer**. Would you say a consumer thinking of purchasing a diesel today could be adequately assured there will be an adequate number of diesel pumps and if he decided to take a long trip he would not be stranded?

Mr. **Fuller**. If we could run the crude, the answer is yes. But if that is not true, there could be some inconvenience. Of course, the diesel fuel goes a lot farther for the tanking capacity than regular gasoline. This could be inconvenient at times, but no problem as to availability of that product.

Mr. **Scheuer**. I have heard a diesel car when it goes into your garage has a tendency to emit an odor which permeates the house.

Mr. **Fuller**. There is a certain odor from diesel emissions. It is not dangerous, but today we all observe the odor you get in your garage from pollution control engines which are not dangerous but are sometimes pretty unpleasant. Diesel has to go unless we have an air quality problem, and I hope we do not.

Mr. **Scheuer**. Congressman Quayle of Indiana.

Mr. **Quayle**. Thank you, Mr. Chairman.

Mr. Fuller, let me try to summarize my question as best I can. First let me summarize the intent of the committee. There are two concerns, one, the dealers, and two, competition. That is a fairly adequate description of what we are after.

Mr. **Scheuer**. How it will affect the market price and consumer. There are other things that affect consumers besides competition.

Mr. **Quayle**. We can add consumer, but let me put that there and look at the competition aspect and the dealer aspect because that is what triggered this legislation, the independent dealers, the decline of dealers and looking for a way to give them an opportunity to, quote, "save the farmer."

Put yourself in the dealer situation, how could we best, because I would say perhaps now that we do not have that true fair competition right now, because there are too many distortions where there are regulatory quirks or what have you. What would be the best remedy if this type of legislation were considered? Complete decontrol. What I would like to see is the dealer be able to get that product from wherever he gets it at the same price as the guy down the street so they can compete on an equal basis. What needs to be done? In my mind, that is what I think the committee is trying to strive for and that is something I would like to see if possible—can we get there?

Mr. **Fuller**. Sure, I think we have been there in the past and I think we can be there in the future. During the time the dealer had the most substantial growth in the sixties and early seventies there was a certain amount of regulatory structures, the Clayton Act, what have you, but the dealer grew very rapidly.

Mr. **Scheuer**. Your testimony is interesting. Will you pull your microphone a little closer?

There are existing mechanisms for taking care of the need for fair competition if you will, although——

Mr. **Fuller**. It is there, in terms of competition should occur in the kind of situation that you are talking about, the dealer is going to get his fair shake and piece of this action as we go down the road. I can assure you that as president of Amoco with respect to our own operation. We have looked very carefully at cooperation, there may be places where there are things we want to try. What we need is the ability to do what we need to do with respect to the dealer. There are areas where the neighborhood has changed; the number of people who are interested in branded gasoline. There are places in the country where 70 percent of the operations are unbranded and it is difficult for others to survive. Salt Lake City is like that. Freed from regulation, we will continue to reduce our service station population as a company but we will also continue to buy new ones. They are liable to be pumpers and will be operated in our case, by dealers. Our response to the pumper situation is not the company operator but rather to put a very smart businessman in there, and give him three or four of these operations which you need in order to keep these things going and we think that type of entrepreneur will do better.

Mr. **Fuller**. That is a low-profit business. He needs three, four, five, depending on the operation. Sometimes 2 conventionals and 12 are pumpers.

So my answer is a simple one: Decontrol is what we need which will not preserve the dealers we have today, but they will continue to be viable.

Mr. **Quayle**. Under a decontrol situation in a town such as Huntington, Ind., Fort Wayne, Ind., will all those service stations and those dealers, will they be able to get gasoline from their distributor at the same price or will there be radical discrepancies as to what one dealer can get from one distributor versus that from another? I happened to be in Terre Haute, the branded guy was getting gypped because the unbranded guy was getting it at 8 cents cheaper. There was no way he could compete. There are other industries, I am in the newsprint industry, if I could not get any newsprint or ink at the same price as other people, I could not compete either. Will those people be able to get that gasoline at the same price?

Mr. **Fuller**. I mentioned foreign difficulties, and that is a whole new subject. There is no reason to assume that the dealers in any type of operation will not get adequate supply. The tendency will be for the prices to be closer than they are now. That was the situation prior to 1973. In fact, it is getting closer to the situation today because there is competition out there and were it not for some of the aberrations that I mentioned before, they would come very rapidly closer together. There will be differences and it will depend on the cost situation of the individual company and how he perceives the marketplace, but they have to come together. There is a great deal of price elasticity, not in terms of the long range, but as against one dealer on one corner and another right across the corner. You cannot afford to have a big price difference and stay in business. We continue to look at the competitive situation. Our cost situation today would justify a much higher gasoline price than we have but we have not done that for competitive reasons but you will see that in the future.

Mr. **Quayle**. It would be fair to quote you that under decontrol the price discrepancies would be much less and there would be a possibility it would be basically the same?

Mr. **Fuller**. There would be a more fundamental relationship between the different types of marketing than there is today.

As somebody asked me before, what price differentials ought to be between various types of marketing. There is a historical answer, it is not intended for there to be a 17 cents difference, but 2, 4 cents difference. The regulations causing that is breaking down the relationship of the dealer with the customer. If your dealer is out there forced to sell at a greater price then his relationship with the consumer is affected and it is hurting the dealer. And of course——

Mr. **Quayle**. You mentioned the Petroleum Marketing Practices Act. Do you see any changes in those laws which would be necessary to make available a speedier remedy if there were antitrust violations?

Mr. **Fuller**. The question of speedy remedy is a difficult one. If you get before the FTC, it is almost an impossibility. You are talking about the courts, the system is in place for a speedy remedy. The reason it did not work has nothing to do with the substance of the legislation, it has to do with the backlogs in the courts, with the complexities of the factual issues associated with it.

Unfortunately, we have a great deal of litigation that always goes on. It is not true the service station dealers, the jobbers and our competitors do not pursue a remedy, they do.

By their nature they are very complex pieces of litigation. We try to settle them because we do not want disputes with our customers. There is as much remedy as there is problem and I see no reason for improvement in that.

Mr. **Bedell**. Will the gentleman yield on that?

Mr. **Quayle**. Be glad to.

Mr. **Bedell**. Have you any indication as to what the litigation costs would be?

Mr. **Fuller**. It depends on the kind of suits. If you are talking about a contract suit in a State court that is less than if someone charges an oil company in violation of the *Sherman* case which is a large matter.

Mr. **Bedell**. You know what you pay your lawyers?

Mr. **Fuller**. Yes, we have several in the room and I know what we pay them.

Mr. **Bedell**. I hope the public realizes that Amoco is in a better position to pay lawyers to litigate these things than the individual dealer in Cedar Rapids, Iowa.

Mr. **Fuller**. In opposition to that, it is true in terms of the financial resources of the company, no one could deny that we have them, but it is also true that litigation is expensive, disruptive in terms with our relationship with our customers.

Mr. **Bedell**. That is not my point. My point is, there are many, many, many people and many, many, many businesses in our country which simply are not in a financial position to afford that protection and it disturbs me that the public is not aware of that situation. There are not many dealers who would be able to afford $100,000 to go to court.

Mr. **Fuller**. There are mechanisms you will hear about, but it is quite common for dealer associations to take up problems. There are other ways besides litigation to deal with problems. Yesterday and today we have roughly 50 dealers in our offices in Chicago. The purpose is to find out what their problems are.

Mr. **Bedell**. Litigation is the final step for protection of the individual in our society. If that is so expensive that it means the average person cannot afford it, then it is one-sided, in my opinion.

I yield back to the gentleman.

Mr. **Quayle**. Knowing that these laws are complex and costly, that is why I asked if there is not a way to provide a remedy which would be less costly and when people feel some injustice, they would be able to get a quick adjudication of that issue.

Mr. **Fuller**. There are not that many options. There are options of the courts, options of administrative relief—there may be some I missed, but both dealers, jobbers, would tell you, the option of regulations such as we have with the DOE, is not any better in terms of time consuming, in terms of the expense in dealing with it and in fact is far worse than commercial mechanisms for dealing with disputes between parties.

Mr. **Quayle**. There are a couple of schools of thought, talking not necessarily to the dealer, but the jobbers in particular as they look at this legislation and this problem. They all basically say for decontrol and deregulation, then they say, maybe we ought to have some divorce regulation, or give us a more effective remedy.

So I am trying to look at our choices and options to deal with this option as we move toward decontrol which is correct and something I wholeheartedly support. Once we get beyond decontrol, then what?

Mr. **Fuller**. There are other political situations where that is easier to deal with. But your system is time consuming and difficult and I know of no way to change it.

Mr. **Scheuer**. We now want to recognize Sam Devine, the ranking minority member on the Interstate and Commerce Committee. We are happy to have him.

Mr. **Devine**. Thank you, Mr. Chairman. I represent central Ohio, I have been contacted by the Central Ohio Gasoline Dealers Association. They are trying to shepherd a bill through the legislature and are equally interested in this divorcement legislation on a Federal level.

I have scanned the testimony of those who are to appear here this morning as well as yourself. There seems to be no diversity—it is either black or white. Last night I spent about a half-hour reading a lucid view of this legislation put out by the Heritage Foundation. Other than the fact they did not feel legislation was warranted on the Federal level, they estimated this would cost the consumer about $250 million and as high as $2-plus billion. Do you agree?

Mr. **Fuller**. I could not confirm the arithmetic, but there is no question about the fact that the artificial preservation of one portion of the industry has to have a cost. That cost can be borne in various places depending on how the matter is handled, but there is no question about the fact, of whatever you do, has a tendency to reduce the competitive viability of those forces in the market that do tend to be more efficient, that do tend to be low priced, that do tend to deal with that segment of the populace which is a price buyer, you have to have somebody paying a higher price overall for his fuel.

Mr. **Devine**. Who that will be I do not know. It has to be the consumer.

Mr. **Fuller**. It has to be.

Mr. **Devine**. The wide divergence between $250 million and $2-plus billion. You said you think the Robinson-Patman Act is a poor piece of legislation. Can you suggest some changes in that legislation which would make it more effective to remedy the problems in this industry?

Mr. **Scheuer**. Or do you think it should be wiped off the books?

Mr. **Fuller**. That was my thought. That legislation has been on the books for a long while and the act has been defined pretty well by the courts, and I think people have a reasonable understanding as to its fundamental meaning, and certainly the question of injury to competition not present in this bill, but present in the Robinson-Patman Act makes it superior to the bill which is being considered here. There are provisions in this bill which—but certainly in order for there to be a cause of action, there must be injury in competition. This is important and it provides whichever redresses are necessary for those who find they are being injured by discriminatory pricing. I think the marketplace takes care of its problems more so than the Robinson-Patman legislation.

Mr. **Devine**. Recalling my law school days and trying to address the different acts mentioned here, the Sherman Act, Clayton Act, et cetera, would you say the marketplace is where the solution lies?

Mr. **Fuller**. Yes. Certainly I could not take the position that there should not be some sort of standby rationing authority in existence in the United States. The reason I mention that is that even I recognize there are some times when the problems are so bad, that they need to be dealt with by public policy. If we were to have a complete cut-off of our imports of oil today, it could destroy the economy of this country. There must be a mechanism for taking care of a major problem of that sort. But in the absence of a major problem of that sort, I think the marketplace will take care of its problems.

Mr. **Devine**. I would just as soon leave out the stand-by rationing authority at the moment.

In Ohio, it is my understanding that an independent dealer is permitted to have a mark-up of about 16.1 cents a gallon, whereas the company-owned stations can only go to 8 cents. That is a ceiling, not a bottom, and I suppose the dealers have the latitude to charge up to that figure and can meet the competiton by not having the greater margin.

Mr. **Fuller**. That is correct. In fact over the past several months, the margins of dealers have been declining because of the competitive nature of the marketplace.

As you are well aware, the factual situation you find in Ohio is unique because of the Alaskan North Slope situation. Not entirely unique because we feel it competitively outside the State of Ohio as well.

The point being there are large discrepancies around the United States caused by regulation, but the one you state there is by far the largest.

Mr. **Devine**. Thank you, Mr. Chairman.

Mr. **Bedell**. Mr. Gonzalez.

Mr. **Gonzalez**. Thank you, I did not intend to ask any questions, but I do want to say for the record that the one reason I have not been here at some of the prior hearings and the main reason for my tardiness today, is the rather difficult situation with respect to a subcommittee in the Banking Committee I chair and pending legislation and mark-up we had a few weeks ago. I want that to get into the record because I have just not been able to get here with the conflicts of subcommittee meetings.

However, I do feel compelled to make some comments on the dialog just terminated, particularly, with reference to the Robinson-Patman Act.

In the first place, Mr. Fuller may not be aware of the fact that this committee, under the chairmanship of Mr. Evans of Tennessee, ordered the formation of an ad hoc committee on Robinson-Patman, when the biggest and latest assault on the legislation was initiated by the Nixon administration and the Nixon Justice Department.

We had probably the most extensive series of hearings over 1½ years that have ever been held on the subject matter. If Mr. Fuller is interested, I would like to send him a copy of the report. I know there has always been a very strong opposition to the act, and in fact, even collaterally in this legislation, there will be attempts to try to undo some features of the Robinson-Patman Act as there are in the pending so-called trucking deregulation legislation. But the reason is obvious. It goes back to the reason why the Congress approved bipartisanly, the act to begin with. It is the same old story. Mr. Fuller represents that philosophy and that segment of our economy very well and that is the freedom and liberty for the pike means death for the minnow. What we are trying to do here is trying to protect the minnows. Nobody in that segment of the economy Mr. Fuller represents has been too much worried about them. Also, I think a little bit of history would be illustrative of the point I make.

Mr. **Scheuer**. May I ask my colleague a question?

Mr. **Gonzalez**. When I finish.

Mr. **Scheuer**. How about the "guppies," the consumers?

Mr. **Gonzalez**. I do not know how you would characterize consumers any other way.

Let me complete my train of thought here, because I think it is important because I think you ought to familiarize yourself with some of these hearings.

Mr. **Scheuer**. I would like to see the report.

Mr. **Gonzalez**. You should have seen it. We had to make the second printing on it.

This same committee, with Tom Steed presiding, was the first to arouse the Congress and the American public to the dangers of the dependency on foreign oil. They had hearings in Texas, they had hearings all over the producing States. They wrote a very illustrative report and even then pointed out our growing dependence on that source. It was the group or economic segment you represent, Mr. Fuller, which opposed that and were insistent on increasing our dependence on importation of oil.

Of course, a lot of things have happened since then. The Arab nations have turned against your companies and now you are in the footing which the consumer was in. But to the eternal memory of Mr. Steed, they had put it in the record, it is also represented in a voluminous report printed by the committee.

I had to say this, Mr. Chairman, because if nobody else says it—and nobody else will—I should not leave the impression that the Robinson-Patman Act is such an undesirable, unworkable act. It has been called the charter, the Magna Carta, of the little businessman, which it is. It is the only legislation on the books which the little businessman without having a lawyer can do something and it has been under constant assault since the thirties.

Mr. **Bedell**. Thank you, Mr. Gonzalez.

You are listed here as representing the American Petroleum Institute. Are you representing them?

Mr. **Fuller**. Yes.

Mr. **Bedell**. Do you know why the others did not come?

Mr. **Fuller**. Generally, the companies represented by API were of the same view, namely to oppose this bill. I was asked to testify on behalf of this bill rather than having a large number of people coming here. My understanding is that several companies including my own, will be filing statements with the subcommittee forthwith.

Mr. **Bedell.** I think we owe you a deep debt of gratitude, partly because of the attitude you have had while you were here. As I have said, there is quite a divergence of witnesses we have had. We started at 9:30 and it is now 11 o'clock; it is not your fault, it is because of the interest we have.

Your organization has some 7,500 members representing all branches of the petroleum marketing areas.

Mr. **Fuller.** That is correct.

Mr. **Bedell.** Does it include retail dealers, do you know?

Mr. **Fuller.** I do not think so.

Mr. **Bedell.** Mr. C. T. Sawyer, head of industrial affairs. Do you know him?

Mr. **Fuller.** Yes.

Mr. **Bedell.** He was before us in October. He said that:

> The subject of your hearings today—marketing practices—involves issues on which there is a diversity of opinion within the industry. API must present a consensus view, and consensus did not exist in the subject areas of your hearings.

Has a consensus now developed among the members of your organization?

Mr. **Fuller.** There is a general consensus as to the lack of need for this legislation. The factual situation is between different companies and I could not possibly sit here and represent the different factual decisions.

Mr. **Bedell.** But you believe a consensus has been reached?

Mr. **Fuller.** Yes.

Mr. **Bedell.** Let me review a little more of Mr. Sawyer's testimony.

> Furthermore, API is precluded by the antitrust laws from involvement in certain aspects of issue, and it would, in fact, be illegal for API to even attempt to reach a consensus.

Do you think he was incorrect in that? You understand as chairman of the committee, it is quite important that we have accurate testimony back and forth so we know what the situation is.

Mr. **Fuller.** I will not give you a legal ruling but I will not concur in that statement.

Mr. **Bedell.** We are trying to get information here. You can understand it is difficult when we get differing testimony from people representing the same organization.

We also should repeat some previous testimony which was not given by your company—I think everybody recognizes your company operates through a dealer network—but we have had people from the industry who testify they compete with their own dealers and it is more profitable for them to sell their own gasoline through their own stores. You understand the concern we have?

Mr. **Fuller.** I do. I submit, as I said before, it is an extremely minor factor as against the other forces taking place in the market.

Mr. **Bedell.** The other laws you have mentioned you feel take care of the problem?

Mr. **Fuller.** Yes, and I was glad to hear from the gentleman—Mr. Gonzalez—that he viewed the Robinson-Patman Act takes care of all the problems which exits.

Mr. **Bedell.** The Robinson-Patman Act did not take care of all problems, the Marketing Practices Act did not take care of rent, and other problems.

Mr. **Fuller**. Yes, and there are others as well.

Mr. **Bedell**. I have no further questions. We appreciate you being here, Mr. Fuller. Our next two witnesses are Edward J. Mitchell and Milton Copulos.

The committee has completed one of five different groups of witnesses. It has taken us an hour and a half. At this rate, I do not know when we will finish these hearings. We would urge you to summarize your testimony, if you will. Mr. Mitchell, we will let you be first.

## TESTIMONY OF EDWARD J. MITCHELL, PROFESSOR OF BUSINESS ECONOMICS, UNIVERSITY OF MICHIGAN, ACCOMPANIED BY MILTON R. COPULOS, HERITAGE FOUNDATION

Mr. **Mitchell**. Thank you, Mr. Chairman, I am Edward Mitchell, a professor of business economics at the University of Michigan, director of energy policy studies, American Enterprise Institute.

I have in the past served in the Government with the President's Council of Economic Advisers and have been advisor to numerous Government task forces, advisory task forces to energy and petroleum policy.

It is the contention of the organized dealer associations that the decline in independent gasoline dealerships is due in large part to the actions of large integrated oil companies. It is alleged that vertical integration enables these companies to subsidize operations with profits of other operations thus squeezing competitors. In the past refining operations were alleged to be subsidized. This is an old and popular thesis dating back to the 1930's. However, I must say I have yet to see a study of scientific nature that supports these predatory theses. On the other hand, I believe there are a number of studies which support the competitiveness of the petroleum industry and the efficiency of that industry's structure.

The bill contemplated by this committee appears to assume that the well-being of independent gasoline operators is threatened and that the competitive viabilty of the independent sector needs protection by legislation restricting refiner activities. I believe this interpretation of what has been happening in the petroleum market is incorrect and therefore the remedy is misdirected. The decline in the retail dealer in recent years is a result of three forces: First the soaring crude prices and therefore reduced gasoline demand in the United States. Second, a long-term shift in consumer preference toward low service, low price marketing and third, price and allocation regulations which break the implicit contract between dealers and customer and otherwise favor distribution through refiner or jobber operated channels.

There is little this committee can do about soaring crude prices or about consumer preference. About the only step I believe that it could take to help small business and restore competition to the retail marketplace is to call for accelerated decontrol of the petroleum industry on the notion that such continued regulation hinders the competitive viabilty of the independent dealer.

It is the premise of H.R. 6722, that its problems are the actions of larger predatory companies. I believe that the petroleum industry is competitve at each level. Several years ago, a survey of university economists showed that more than three-quarters of them believed the industry was competitive at all levels. If that is the case, large companies cannot determine the nature of retailing. It is the market that will determine that.

Mr. BEDELL. When was that study?

Mr. MITCHELL. I do not have the exact year. I said several years ago.

Mr. BEDELL. Thank you.

Mr. MITCHELL. But suppose for the moment, that larger oil companies did possess market power. Why would they use it to destroy the independent retailer? Large oil companies overwhelmingly sell gasoline through dealers. Most of the dealer stations they supply are owned by the large companies. Destroying dealers depreciates these assets. The next best use of these assets, is appreciably lower in value. Why would firms use market power to reduce their wealth? Indeed under the incorrect assumption that large oil companies have large power, we should be more concerned as to a bias toward independent dealers. There is no motive for major oil companies to harm their retail dealers.

The facts as indicated in my printed statement show that company operated marketing is primarily the province of the small independent refiner. They have the lion's share of the market and are growing faster. Sales of the independent stations have remained at 79.2 percent of all sales in 1972 and 1978.

Examining the various provisions of this bill, I believe they would reduce the range of consumer choice, reduce competition between refiners, thwart growth of the independent sector and raise gasoline prices.

I have not focused in these remarks or in my statement submitted to the committee, on the detailed provisions of H.R. 6722. I would be happy to discuss the specific provisions of the bill in the question and answer period.

Mr. BEDELL. Thank you very much, Mr. Mitchell. Your prepared remarks will be made part of the record.

[See appendix D.]

Mr. COPULOS. I would like to state for the record, the views I will express are soley mine and do not reflect the position of the Heritage Foundation.

I find a certain irony in the fact that retail petroleum divorcement is presented as a proconsumer measure. The measure will hurt the consumer in his pocketbook. At a minimum the enactment of this legislation will cost the motoring public $247 million each year in higher gasoline prices which in time could raise to as much as $2.48 billion. The legislation is aimed at a problem which did not exist. The problems which sparked the Maryland statute have been addressed at the Federal level and we have currently both the Federal Fuel Marketing Act and the Emergency Petroleum Allocation Act which address the amount of gasoline supplied to a given dealer and give many some avenue for redress.

The question then becomes what is the rationale for such legislation and what has been presented by many of the proponents of this measure is that it is necessary to preserve competition in the marketplace and to prevent the major oil firms from driving the independent dealer out of business. However, again, every objective analysis of trends in the gasoline market, indicate the problem did not exist. Major firms are not driving independent dealers out of business. Dealers are going out of business. However, it is not as a result of some predatory tactic or some enigmatic tactic in Houston.

If we take the bottom four, they did experience an increase in the number of retail outlets. We find in the period after 1977, they reduced those outputs by over 25 percent. The question then becomes what is the source of the competition which seems to be driving many independents out of business. There are many factors, perhaps the single most significant is the increase in price following the Arab oil embargo and the growing concern of consumers on price. Mr. Fuller indicated there was roughly a 50-percent group who wanted a choice between branded and nonbranded. Forty-eight percent of Virginia consumers indicated that price was their primary consideration in the purchase of gasoline, far outdistancing any other consideration. This means that price competition is going to be a major factor in the market, which means that gas and go operations, pumpers as they are called and other nonbranded outlets will cap their increasing portions of the retail market and in fact the growth of independent marketers, jobber-owned stations, seem to be a very strong indication that this is the fastest-growing segment of the market, along with the growth of the small to medium size refiners.

The bottom reason to it all is that the marketplace is functioning to a degree. The marketplace will determine which dealers ultimately will remain in business. You can delay the effect of the market through legislation, but eventually, it has a disconcerting way of eventually catching up with you.

Mr. **Bedell**. We will also make your prepared comments part of the record.

[Mr. Copulos' prepared statement follows:]

## PREPARED STATEMENT OF MILTON R. COPULOS

Mr. Chairman, I would like to thank the Members for this opportunity to express my views on the subject of Retail Petroleum Divorcement. I would also like to state for the record that the views expressed are solely mine and do not represent any official position of the Heritage Foundation.

As I am sure you are all aware, in the spring of 1974, the Maryland General Assembly became the first state legislature to enact a Retail Petroleum Divorcement Law. The Maryland Act required integrated oil firms to cease operating retail outlets by the summer of the following year. Soon after its enactment, the Maryland statute began to draw attention in state legislatures across the nation. Local officials had been struggling with the problem of responding to the mounting constituent pressure to do something about the lines and shortages which followed in the wake of the OPEC embargo. Since most of the legislative authority in this area was within the purview of the federal government, divorcement appeared to present an attractive and highly visible means of addressing their constituents concerns.

I must say that I find a certain irony in the fact that Retail Petroleum Divorcement is generally presented as a pro-consumer measure. In fact, nothing could be further from the truth. This measure will hurt the consumer where it counts the most, in the pocketbook. At a minimum, the enactment of such legislation at the federal level will add $247 million to the annual gasoline bill of the motoring public, and that figure could rise to as much as $2.4 billion. Moreover, the legislation is aimed at a problem which does not seem to exist. The complaints which sparked the enactment of the Maryland status have already been addressed at the federal level through other means.

For example, the initial complaint in Maryland was that the integrated oil companies were favoring the stations they operated directly when it came time to allocate supplies of gasoline during the 1973 embargo. In response to these complaints the State Comptroller, Louis Goldstein ordered a survey conducted to determine the validity of the operators allegations. The survey indicated that there seemed to be some substance to them, and divorcement legislation was introduced as the state's means of addressing the problem. While all of this was going on, though, the Congress had not failed to take notice of the problem.

In response to complaints from around the nation, the Congress enacted Public Law 93-159 in 1973, the Emergency Petroleum Allocation Act. This Act requires that reductions in gasoline allocations be made uniformly among all customers of a given refiner. It therefore makes impossible a re-occurrence of the circumstance which was alleged to have taken place in Maryland.

A second complaint by the service station operators concerned the arbitrary cancellation of leases. Again, the Congress took quick remedial action. In 1978 it enacted the Federal Petorleum Marketing Practices Act which prohibits such arbitrary actions by refiners, and provides an appeal process, the so-called "Dealer Day in Court".

Given the fact that these two basic complaints have been resolved through federal legislation, the question then remains as to what rationale could exist to justify an action as radical as Petroleum Divorcement? Its proponents would contend that if it is necessary as a stopgap against the predatory tactics used by the major oil firms in their attempt to drive the small independent service station operator out of business, and gobble up the retail petroleum market. This certainly sounds like a noble motive. The only trouble is that the action it is aimed at preventing is not taking place.

Every objective analysis of the retail petroleum market has agreed that the major firms are not driving the independent service station operator out of business. In fact, they are reducing rather than increasing their involvement in that portion of the petroleum industry. For example, taken together, the market share for company operated stations among the eight largest refiners has decreased 22.4 percent since 1972. This group includes Exxon, Texaco, Shell, Arco, Chevron, Mobil, and Gulf. The latter four refiners had increased the number of outlets they operated directly between 1972 and 1977, however, between 1977 and 1979, such outlets decreased by more than 25 percent. The number of outlets, though, is not the best available indicator of the state of competition in the retail petroleum market.

Perhaps the most accurate indicator for competition in any market is the percentage of sales accounted for by each of that market's participants. Here again, the weight of the evidence would indicate that the major firms are not responsible for the decline in the number of independently operated service stations. While market shares for direct gasoline sales by all refiners rose roughly 4 percent between 1972 and 1979, this increase can be accounted for by the decline in bulk sales to such entities as taxi companies and auto dealerships. Moreover, the change in the refirner's sales through their directly operated stations cannot account for the 11.3-percent decline in sales experienced by dealers. Who then captured the market?

All indications that the most significant force in the dynamics of the current retail petroleum market is not some consortium of giant oil firms, but rather a group of small businessmen, the oil jobbers. These small businessmen, who take title to oil from majors, and them resell it, are increasingly moving into operating their own filling stations. Because they offer a limited range of services, and are frequently self-serve, they are able to offer the consumer a lower price.

The share of the retail petroleum market accounted for by such marketers has risen by 12 percent during the period under discussion, more than enough to account for the total reductions in sales by the branded dealer. Moreover, polls of consumers are increasingly indicating that their primary concern is price when they purchase gasoline. It is to be expected then that the trend would be towards an increasing market share for those outlets who meet the consumer's need.

Granted, this means that price competition will play an ever-more important role in petroleum marketing in the coming years, just as gasoline milage will continue to increase in importance as a consideration in automobile sales. This means that those businesses which do not adjust to the changes in the market will not make the grade, but that, gentlemen, is how the free enterprise system works. Can't you see the paradox which is created when you justify the erection of barriers to the functioning of the marketplace with claims that you are protecting competition?

We must recognize Retail Petroleum Divorcement for what it is: a protectionist measure aimed at sheltering a specific class of businessmen from the normal pressures of the market at the expense of the consumer. Moreover, the effects this initiative will have are exactly the opposite of those claimed.

Divorcement will not benefit the consumer, it will cost the consumer at least a quarter of a billion dollars each year. It will not foster competition, it will inhibit it. It will not even curb the growth of "Big Oil", because the refiners it will hurt the most are the medium sized ones who offer the greatest source of competition the major firms encounter. Most importantly, in the long run, it will not work. You cannot hide from the market. Its forces may be held at bay for a while, but they have a disconcerting way with eventually catching up with you.

Mr. **Bedell.** Mr. Scheuer?

Mr. **Scheuer.** Well, I would like to ask you the same question I asked the previous witness, that would be to fine tune your statement that this piece of legislation is anticonsumer and give us the details.

Mr. **Copulos.** As I noted, the primary consideration in virtually every survey and study—we at the Heritage Foundation are conducting a survey this month to look into this question more deeply, has become price. I think all of us can remember a few years ago, prior to the advent of gasoline lines we would argue where Amoco white was better than Exxon extra. People now tend to focus on where can I get the cheapest gasoline.

We have an example right now where consumers in Maryland have been severely injured by the announcement of Conoco that they are going to pull their 10 KO stations out because of nonadherence to the law.

We also have the specter of gasoline stations being lost in one area of the State or at least under one interpretation of the allocation act going back to a policy.

In Maryland, where I was legislative assistant to Victor Crawford, one of the cosponsors of the original allocation bill, we know there are some areas in the State where stations will be closed which are served only by company operated stations because nobody else would open one up there, especially on Maryland's Eastern Shore. Whether a station opens there or not remains to be seen under the convoluted certification system we have under our present laws.

Mr. **Bedell.** About how many stations do you think that would occur with, nationwide? How many stations do you think would be closed in such a manner which would mean the motorist would not have convenient access to gasoline?

Mr. **Copulos.** We have not conducted a comprehensive survey.

Mr. **Bedell.** How did you get your $250 million figure?

Mr. **Copulos.** The gallonage pumped through company operated stores—we have to remember gasoline prices are determined by the Department of Energy.

Mr. **Bedell.** This bill is written with deregulation in mind. I take it your figures have to do with the situation under deregulation?

Mr. **Copulos.** I am saying as nearly as we can determine price differentials—totally accurate data on this problem is not available, but using the Lundberg letter, which is the best source we have been able to find, we find a range of 1.9 to as much as 10 cents a gallon, price difference between company operated and dealer operated stations around the country.

Mr. **Bedell.** The company operated stations are selling for less than dealer operated?

Mr. **Copulos.** Yes.

Mr. **Bedell.** With deregulation would you expect that to continue?

Mr. **Copulos.** I would expect there to be an evening of prices.

Mr. **Bedell.** So your $247 million has to do with what the situation would be under regulations we have now and you are not making such a statement based on deregulation which is what we will have in the future.

Mr. COPULOS. Hopefully if we do have deregulation, I think the figures would be different. To the extent deregulation takes place, you will find a break on prices. There are a number of very unusual situations which have evolved through our current convoluted system of pricing.

Mr. BEDELL. I thank the gentleman for yielding.

Mr. SCHEUER. One last question, what is your view of the open branding system and how does that affect consumers?

Mr. COPULOS. You always have the high viability aspect of it making it difficult to deal with. There are certain guarantees which are implied when you purchase a brand name. Obviously under an open brand situation, it would be very difficult to invoke such guarantees or warranties or to have such express warranties. So the consumer could ultimately be damaged by an adulterated product.

Mr. BEDELL. But Amoco, one of the biggest distributors say they have an open market situation. Apparently you feel it is dangerous to the customers to buy Amoco gasoline.

Mr. COPULOS. I was saying there are certain implied warranties that would be difficult to enforce. Like he pointed out the big sign saying——

Mr. SCHEUER. If it was another brand, would not the pump carry the name of the other brand and would not the implied warranties go? Suppose he had another pump and said this is Mobil, Sunoco, Exxon.

Mr. COPULOS. You could have a situation if I may give you an example, such as occurred during the initial effects of Iranian supply interruption where a number of companies had to go into the market and purchase spot product as opposed to crude. You had gasoline coming into the country which had been refined in Jamaica, for instance. It would be difficult for a refiner in Jamaica to be fined when it was determined he had put something in the gas to make it freeze up in the tank.

Mr. SCHEUER. Should we make the stations responsible for any problems that come from selling on any open basis.

Mr. COPULOS. Somebody has to be responsible.

Mr. BEDELL. Will the gentleman yield?

Mr. SCHEUER. Yes.

Mr. BEDELL. During the recent oil shortage most dealers permitted their operators to purchase from the open market and there have been no problems as far as we know.

Mr. COPULOS. That is correct.

Mr. BEDELL. Mr. Devine.

Mr. DEVINE. I did not know somebody from the Heritage Society was going to testify or I would not have reviewed the study. Thank you very much for your testimony. It is very helpful.

Mr. COPULOS. Thank you for your kind remarks.

Mr. QUAYLE. Thank you for letting these people testify at the last moment.

To detail a little bit how you arrived on this impact to consumers. If you could detail that a little bit, as to how you arrived at that figure. It is a very important figure.

**Mr. Copulos.** There is currently underway a national survey of gasoline prices and differentials at the pump. Some parts of that have been completed. We find that for example the Lundberg letters survey of 37 cities indicated a range in price differentials between company operated stores and dealer operated stores which ran anywhere from 1.9 to as high as 10 cents a gallon.

Also when the regulatory framework which determines price is charged at the pump, we find a considerable disparity as to what any given refiner can charge. We therefore took a weighted average and took a minimum and maximum figure, based on the existing differentials to give us a range of price differentials which could be anticipated. Our assumption is that under a situation where stores were converted from company operated, the dealer would raise his margin to whatever other dealers in his area were charging. This is the basis of those particular figures.

In some areas at least initially, it is also our assumption as competition diminishes in the market, if you eliminate some of the competition factors in the market such as the relatively small refiners and stations, you will find that diminution of competition will lead to a gradual creeping up of margins at stations around the country. Presently even dealer operated stations are charging less at the pump, than they can.

**Mr. Quayle.** Am I correct these assumptions were made with the exception of the controls as made today?

**Mr. Copulos.** Yes.

**Mr. Quayle.** Would that be true if the controls were removed?

**Mr. Copulos.** As long as you maintain divorcement, because dealer operated stations will be less efficient in many instances than company operated stores although not in every instance, not in every case. What you will find there will be an increase in price. To the extent you reduce the amount of regulations in the petroleum market you will find you will eliminate many of the present spot shortages and so on that occur.

**Mr. Quayle.** Is this figure that will cost the consumer because of controls or because of divorcement, or because of both?

**Mr. Copulos.** I think you can assume the lower figure and it is a part of both, the lower figure will occur if divorcement occurs at the lower level. A higher range will be largely determined by market factors and in the event of decontrolled gasoline prices there could be moderation in the figure as a result of competition between stations.

**Mr. Quayle.** What I am trying to extract is the impact on consumers because of divorcement under decontrol. Does this report show a higher cost to the consumer because of divorcement?

**Mr. Copulos.** The minimum figure, the $247 million figure will occur if you impose divorcement, regardless. That is a reflection of the lower price mandated by law.

**Mr. Bedell.** That price would no longer be mandated by law under decontrol. The reason you have the $247 million is because of the mandated price differential under controls.

**Mr. Quayle.** This is what I am trying to distinguish.

I want to get control and decontrol out.

Let's assume decontrol. I want to know if there is going to be an impact, per se, because of divorcement legislation.

Mr. **Copulos.** The fact that the company operated on balance tend to be more efficient——

Mr. **Scheuer.** I did not get that.

Mr. **Bedell.** Sooner or later we want you to explain that.

Mr. **Copulos.** By and large, the factor of efficiency and factors of training, what have you, will mean the price at stations which would be operated by independents which previously had been operated by the companies will wind up charging a higher price. I sincerely believe that to be the case. I cannot really say how much the price increase under decontrol will be. There will be some. The minimum figure will be a reasonable reflection because that is the difference between the lowest price a dealer can charge and the price of companies competing in the same area.

Mr. **Quayle.** Again, I am trying to get an impact on the consumer——

Mr. **Copulos.** $247 million.

Mr. **Bedell.** The previous witness we had from the American Petroleum Industry has testified he cannot run a station as efficiently as the dealers. You come and tell us that he will run it more efficiently than the dealers. We have to determine who we believe. Your whole argument rests on who is more efficient. Apparently you have figures which show he is wrong or Amoco did not understand it as well as you do.

Mr. **Copulos.** As I noted in my testimony, the trend among major refiners, the large integrated oil firms is away from company owned stations. The very, very large refiner has discovered this is not a business he should be in.

Mr. **Bedell.** Is that because he can do it more efficiently?

Mr. **Copulos.** No. He did not operate the retail outlet as efficiently. However, the segment that does is the middle size refiner. These are the people divorcement will hurt.

Mr. **Bedell.** They are divorced only if they have a substantial crude oil production——

Mr. **Copulos.** How much?

Mr. **Bedell.** Thirty percent, the top 17. Apparently you were not aware of that.

Mr. **Copulos.** That is something I am not aware of. That is a large part of the competitive part of the industry, is it not. As far as the retail outlets go, the companies like Conoco, Marathon, Ashland, Cities Service, which I think is the largest of the small, would these companies be affected?

Mr. **Rosenberg.** Ashland would not be because of its access to crude oil.

Mr. **Copulos.** Those are the companies showing a growth in this marketing and they do have the higher efficiency level. These companies are operating very efficiently. Gulf Oil found they did not operate efficiently. If you allow the market to function it tends to take care of problems like that.

Mr. **Bedell.** It seems to me that either one of two things have to exist. Sohio testified that they made more profit selling through their own stations, and they considered their lessee dealers to be their competitors. But if that is the case, then one of two things exist. If they do have an advantage in the marketplace and can bring product to the consumer cheaper, therefore, to maximize profits they will lean toward their own stations and the independent will be pushed out. If that is not the case and as the gentleman from Amoco testified where he feels the independent is more efficient, then the consumer will not be affected by this and maybe would be benefited. I do not see how we can argue both ways. It is either that the major oil companies are more efficient, can bring product to the consumer at a lower price and with decontrol that is the way it is going to be or if it is not the case, then it is not going to adversely affect the consumer. I hope somehow you can say it will go both ways at once.

**Mr. Copulos.** The top eight companies who have demonstrated a trend away from operating their own stores will continue in that trend and I think they will get out of the market, but the marketer, the medium size refiners who can do this will, and are very efficient—it may well be—I happen to play tennis very, very badly and chess fairly well; it may be that you play tennis well and chess——

**Mr. Bedell.** I play them both badly.

**Mr. Copulos.** There are differences and there are differences in companies. We tend to look at the oil industry as a tremendous monolith out there and it is anything but that. But there are stations affected by this where you will see a significant increase in costs as a result of them operating independently.

**Mr. Bedell.** If you were Sohio, would it not make sense to you if your job is to maximize your profits, to take over those stations so you could make more money?

**Mr. Mitchell.** I pose two situations: One is a purely competitive circumstance in that case, the firm would be forced by competition to go to the most competitive way of selling gasoline. If that happened to be the company stores, it would go that way. Company stores probably are most competitive at the present time and the market is competitive and that accounts for the Sohio experience.

The other circumstance I raised was, suppose there was market power there, how would it use that market power? I suggested if it had a substantial investment in dealer type stations, that it would attempt to use that market power to preserve that part of the market, because the last thing it would want to do would be to have dealers go out of business and be forced to sell out elaborate full service stations for some other purpose and not utilize their full value.

**Mr. Bedell.** Even if the company could make more money by taking over that station it is——

**Mr. Mitchell.** I do not think that is the case.

**Mr. Bedell.** They have testified that it is. They testified they make more money on their own station.

**Mr. Mitchell.** We are talking about two scenarios here. In the one where the industry is competitive, if it is more profitable for the company to sell through company stations they will be forced to do that. In the case of Sohio, it is a question of being forced to operate most efficiently and most profitably.

**Mr. Bedell.** If we want the competitive system to work, it seems to me, it has to be fair competition. But in the case of Sohio where they claim they can make more profit running those stations themselves, where they compete with their own dealer under decontrol, and where they control the supply, price of the product and terms of the lease, there are a lot of us who feel we cannot see how that can be considered by anybody as free and equal competition.

Mr. **Mitchell**. I feel that is free and equal competition. Free competition will result in the most efficient form of enterprise. If the most efficient form did not survive, then I would say it is a clear indication it is not competitive.

Mr. **Bedell**. We would not have trouble if competition was doing it. But if you and I were competing in the same market and I controlled the price and the quantity of your product as well as my own, and if I controlled the terms of your lease then apparently you feel that would be free and equal competition in the marketplace.

Mr. **Mitchell**. I feel it would be in my interest to distribute the gasoline——

Mr. **Bedell**. That was not my question. Apparently you feel the thing I just described would be free and equal competiton.

Mr. **Mitchell**. Competition is defined by all the sellers and buyers in the marketplace.

Mr. **Bedell**. That is where we have all our trouble. We have had other people give similar testimony. I may be wrong but I think competition involves all those factors. If we have people in the society saying do not worry about Mr. Mitchell who did not have a chance to compete against the bigger fish in the pond, we are confident it will all work out fine, then there are some of us who have real trouble with that. It disturbs me for people from our academic community to come to us with that definition. I have real concern if what we are going to say about competition is do not worry about the big guy competing with the little guy, we just want free and open access. It is just a totally different philosophy than I have and it is perfectly proper for people to disagree. But, I have particular trouble when that comes from our academic community. It will absolutely wreck our whole society if we will have a few great big fish taking care of the whole pond, in my opinion.

Mr. **Mitchell**. If you look at the alternative, what you would have to have is a system under which individual firms existed not because they were efficient units, capable of satisfying consumer demand but merely because they were by law, regulation or some other artificial means sustained in existence.

Mr. **Scheuer**. Will the chairman yield?

Mr. **Bedell**. Be glad to.

Mr. **Scheuer**. I sympathize in your concerns. Let me elucidate with accompanying concern, competing for our attention. One is for the viability of the small business entrepreneurs. I really do believe that America would be healthier and happier with small businessmen being able to survive. I also believe in the discipline of the marketplace. I believe also in the free enterprise system. There are winners and losers and people who blip off the radar screen because they cannot make it. That is how we keep prices down for consumers.

At the present time we are faced with a grievous problem of competitiveness and productivity. We are in a position where we cannot sell our goods and services around the world, we have placed all kinds of costs on the individual concern and society to the point where we are requiring our society to invest so much in health concerns, welfare concerns, unemployment, food stamps, all of these adding to the cost of doing business, environment concerns, safety concerns, that we have priced ourselves out of world markets and have infinitely raised the domestic price level, all of these which taken together, feed and fuel inflation and reduce what the consumer can purchase with his real dollar, which does not go up as fast as the commodities he purchases and gas at the pump is spectacular example of that. It has gone up four or five times since 1973.

So I am concerned with the consumer and I am concerned that he have the best possible marketplace in which to function and I am concerned that we stop, look, and listen at the costs that we are adding to goods and services that we are trying to export and those we are trying to consume, be evaluated on some kind of cost and benefit basis. I do not believe in a total pristine society with all the costs gobbling up the rabbit but we may have gone off the deep end, where we have added on costs where there was clearly no corresponding benefit.

We have to understand that restricting competition and consumer choices and options has a cost and mostly it is to the consumer. I want to make certain in an effort to benefit the small entrepreneur we do not lead into this, higher costs to the consumer into our whole society. I think we have to have the judgment of Solomon to weigh these things and have a free enterprise economy where the little guy can survive and give many minimal protections but where we are not doing it at far greater costs to consumers.

Mr. **Bedell**. At least some of us feel to preserve competition we need protection of some kind.

We thank you folks for your testimony here. Our next witness is Mr. James Haslam, president, Pilot Oil, Knoxville, Tenn.

## TESTIMONY OF JAMES A. HASLAM, PRESIDENT, PILOT OIL CO., KNOXVILLE, TENN.

Mr. **Haslam**. First of all, I appreciate very much the opportunity to be here today. I want to tell you about three things: First of all, our company, Pilot Oil Co.; second, why we deal always with company-operated service stations; and third, what this legislation would do to our company.

First of all, after getting out of the Army in 1955 I worked for a small independent oil company in Tennessee, Fleet Oil Co. Then I started Pilot. Today we are operating 95 stations in 9 different Southern States. Things have changed a lot. Our first station was a small station with four pumps, small building, gravel driveway. Today our stations have 12 to 16 pumps, several service pumps, canopies, and cost $150,000. The thing that has not changed is that we have no dealers. We have been in business 22 years, have always had company operated stations. Our only business is the retail operation of stations, selling gasoline at the retail level. In 1965, in order to obtain some personal liquidity, I sold 50 percent of the stock to Marathon. I think it is important to look at our relationship with Marathon. First as a stockholder, they are not unlike any other stockholder. They are on our board of directors, if we make money, they receive dividends.

As a wholesale customer, we receive no preferential terms. The price charged to us is the same charged to other wholesale customers. We receive no preference as to price and credit.

My oldest son, Jimmy, is executive vice president; my youngest son graduates from college next week. He is coming to Pilot.

Now why do we company-operate stations? You have heard a lot of dialog back and forth as to which is the cheapest way to operate stations. I have been in the business 22 years, you have to company operate them to open them at the lowest price. We wanted to be volume operators, therefore, you have to have low prices; and to have low prices, you have to have low costs. The easiest way was to company operate them.

The DOE recently set the maximum dealer margin, 16.1 cents. Over the past years, Pilot has 6 cents, 10 cents less than the allowable margin.

When all the divorcement legislation came up, we went and took each of our 40 stations and checked the closest major dealer stations, we have had 20 surveys, the average price of Pilot gasoline is 4.8 cents less a gallon than other stations.

The Lundberg study which has been discussed today, they put out a figure which they call, and I think this is very important, when you are talking about decontrol. The average weighted margin of gasoline, they list this figure, including major, independents and company operated. We took our margin from last year and compared it with other stations and we found we were operating at 3.56 less margin than all the other stations in the United States. That is why we could operate service stations.

Now who company operates stations. It really is not Amoco, Gulf, Exxon, the big international oil companies, it is companies like Pilot. They company operate 2 percent of their stations. Contrast them with our company where we company operate 100 percent of our stations and have never had a dealer and it is easy to see who this bill affects. It is companies like Pilot.

Because of the related person provision of H.R. 6722, if this bill were enacted we would be out of business. We have built all our stations without service bay facilities, therefore, a dealer has to make a large percentage of his money through service work. A dealer is basically high volume. If they have pumpers, they give a dealer five or six stations but if he is to operate one station he has a lower volume through a larger margin.

If Pilot could not make it, if we are in and out of business, No. 1, we have 500 employees many of whom would have difficulty obtaining other work. No. 2, over the years we have invested $14 million in stations with the idea that under our tremendous enterprise system we would be company operating our stations. This investment of $14 million would be in jeopardy. No. 3, you have talked about this a lot. We sell 110 million gallons annually, if we sell that at between 4½ and 5 cents less, it would cost our customers $5 million if we are out of business.

In concusion I want to make four points: One, we have never had a dealer.

Two, we are not controlled or subsidized by Marathon in any way. One of your concerns is subsidization by retail operations. All the money from Pilot flows from Pilot to Marathon. The money flows in terms of dividends to Marathon and payments to the gasoline.

No. 3, we have 500 employees and these people would be out of work if this bill is passed.

Point No. 4, we have proven over the years we can deliver gasoline to the consumer at the lowest possible price.

It is difficult for me to understand why this legislation should be passed which would put our company out of business. I was listening to a commentator saying inflation, high unemployment and a balanced budget are the greatest concerns. I thought it was ironic that I was coming to Washington to talk about a bill that would put us out of business. Given our past history—and believe me we pay a lot of taxes, it was 47 percent last year—the Government should say, go out and build more stations; you employ a lot of people and you pay your share of taxes.

We have grown from 1 station to 95. We have been doing, obviously, what the consumer wants. If we were not we would still have one station. I would hope if our company is to fail, it would be because we have not served these customers, rather than legislation.

I appreciate the opportunity to be here. I will be glad to answer any questions.

[Mr. Haslam's prepared statement follows:]

## Prepared Statement of James A. Haslam, on Behalf of Pilot Oil Corp.

My name is Jim Haslam and I am the President of Pilot Oil Corporation of Knoxville, Tennessee. I appreciate very much the opportunity to appear before the Subcommittee today. I will confine my remarks to three basic areas. First, I will tell you a little about our company; second, talk about why we company operate stations; and third, what would happen to our company if H.R. 6722 were passed. My remarks will refer strictly to the divorcement portions of the legislation.

### PILOT OIL CORP.

After graduating from the University of Tennessee and serving in the United States Army in Korea, I went to work for Fleet Oil Company, a small independent oil company in LaFollette, Tennessee. I worked for Fleet for three years, and then started Pilot in 1958. Our first station was in Kingsport, Tennessee. Since that time we have had an orderly growth, until today we are operating 95 stations in nine different southeastern states. Our original 95 stations were typical of the independent stations of the Fifties, in that we had a small building, with four to six pumps in front of the building, above-ground storage tanks, and gravel driveways. Today, our stations have changed greatly and they are now modern self-service automated outlets with canopies, concrete drives, and in some cases a small island marketer or convenience food store. Whereas the first stations cost $10,000 for improvements, today the improvements cost $150,000 and more. However, in these 22 years that we have been in business, the one thing that has not changed is the fact that we have never had a dealer. All of our stations since inception have been company operated. This is a very important point when you look at our company. In fact, Pilot's only business in our entire history has been the operation of retail gasoline stations. We have never had any wholesale business and as I have said before, we have never had a dealer.

In 1965 in order to obtain some personal liquidity, I sold 50 percent of the stock in Pilot to Marathon Oil Company. I retained the other 50 percent of the stock. Pilot is in no way controlled by Marathon. Pilot's relationship with Marathon is two-fold: first, as a stockholder; and second, as a wholesale customer. As a stockholder, Marathon is represented on our Board of Directors, and like stockholders in other companies, they receive dividends if we make a profit. As a wholesale customer we are not unlike any of Marathon's other 1,000 wholesale customers. We receive no special treatment in terms of price, supply, credit, or financial assistance. In fact no funds at all flow from Marathon to Pilot, and the only flow of money is from Pilot to Marathon in the form of payment for gasoline and dividends from Pilot. I have always been the chief executive officer of Pilot Oil Corporation and have complete control of its operations. My oldest son Jimmy, is now our executive vice president and chief operating officer. My younger son Bill, who is graduating from college next Monday, will soon join our company in a management capacity. In other words, Marathon in no way controls Pilot; they do not participate in the management of Pilot; they cannot assume the management of Pilot without Haslam's agreement; it is the Haslams who run Pilot; and Pilot's business relationship with Marathon is the same as any other wholesale customer.

### WHY WE COMPANY OPERATE STATIONS

Since we began in business, we have had one basic marketing strategy and that is that we must be a high-volume operator. We soon learned that to be a high-volume operator we must have low prices, and to have low prices we must have a very low operating cost. The cheapest way to market gasoline to the consumer is to operate stations yourself with company personnel. Selling gasoline through dealers is a much higher cost method of operating. To emphasize this point, I want to mention three things. (1) When the Department of Energy recently set the maximum margin for station dealers, they set it at 16.1 cents per gallon. Over the last five years Pilot's margins have averaged 6.1 cents per gallon. (2) One year ago we started taking surveys in Tennessee that compare the price of Pilot regular gasoline with the four closest major oil dealer stations. We have 40 stations in Tennessee and we have taken these surveys twice a month, and over the past year Pilot regular gasoline has averaged approximately five cents less than these major oil stations. (3) The Lundburg Letter is a weekly news letter that publishes vital statistics and analyzes various trends in oil marketing. They publish figures that show the average retail margin throughout the United States—this includes all stations, majors and independents, dealers, and company-operated stations. We have taken these figures and compared them to our average margin for the past 12 months, and we find that our average margin is 3.65 cents less per gallon than all retail stations. The latest Lundberg figures (May 9th) show average gasoline margins to be 11.5 cents per gallon and on that date Pilot was operating at a 6.5 cents per gallon margin. I think that this proves beyond a doubt that companies such as Pilot can deliver and have delivered gasoline to the consumers at the lowest prices because we have historically had company-operated stations. Now who does this legislation really affect? Amoco, Exxon, Chevron, Gulf, and Texaco nation-wide companies operate about two percent of their stations. Contrast this with Pilot where we company operate 100 percent of our stations and have never had a dealer, and it is easy to see who this legislation affects.

### WHAT WILL THIS LEGISLATION DO TO PILOT OIL CORP.?

Becaue of the definition of related person contained in this bill, the enactment of H.R. 6722 as currently written, simply stated would put Pilot out of business. Pilot has always sold only gasoline and motor oil, so Pilot stations have been constructed without service bay facilities. Historically, dealers have made a large percentage of their profits through service work. Because of our facilities, a dealer could not do any service work and therefore our facilities are not capable of supporting a dealer. We are a high-volume, low-margin company, while dealers are just the opposite, the majority of them are low-volume, high-margin operators. Quite frankly, there is not enough margin available for both a dealer and Pilot to make money. To put it even more bluntly, if Pilot were forced to operate through dealers because of this legislation, we would be unable to continue in business. I realize that we are a small company, but I do think that three things should be taken into consideration. First of all, we have 500 employees and these people would be out of a job. Second, over the 22 years that we have been in business we have invested approximately $14,000,000 in stations based on the premise that these stations would be company operated, and this investment would be in jeopardy. Third, and perhaps most important, our customers would have to pay more for their gasoline. We sell approximately 110,000,000 gallons annually, and since our prices are 4.5 cents less per gallon than the average dealer station, our customers would be paying $5,000,000 annually for their gasoline. That certainly will not help in the fight against inflation!

### CONCLUSION

To review my remarks I would like to make five brief points:

Point 1: Pilot Oil Corporation has never had a service station dealer.

Point 2: Pilot Oil Corporation is in no way controlled or subsidized by Marathon and is in fact treated no differently than any other wholesale customer.

Point 3: Pilot and other companies who company operate service stations pioneered the high-volume, low-margin concept. We have constantly proven that we can deliver gasoline to the ultimate consumer at the lowest possible price.

Point 4: Pilot currently employs approximately 500 people and if this legislation is passed all of these people will be without a job. Many of them would have difficulty in finding other employment

Point 5: What gasoline marketing needs is less government intervention in the market place. The basic problem with gasoline marketing today is that government intervention through price and allocation controls has jeopardized the viability of all independent retailers, both chain operators like Pilot and the individual service station dealers. We cannot have competition at the retail level until we have competition at the wholesale level, and this is impossible because of price and allocation controls.

In closing it is quite difficult for me to understand why legislation should be passed which would in effect legislate out of business Pilot Oil Corporation, a company that has never had a dealer, and that is not controlled or subsidized by Marathon. Recently I read where the three biggest problems facing our domestic economy today were: (1) inflation, a great deal of which is caused by higher energy prices, (2) unemployment, and (3) a balanced budget. I certainly agree with this and I think everyone here today will join me in this agreement. As I was thinking about this it occurred to me that rather than passing legislation such as H.R. 6722, it would seem that Congress should be encouraging Jim Haslam to expand his operations, since (1) companies like Pilot are obviously the ones who can deliver gasoline to the consumer at the lowest prices, and this would help in the fight against inflation, (2) we employ many individuals who would otherwise have a difficult time in obtaining work, and (3) believe me we pay our share of taxes—last year our effective rate was 47 percent.

Pilot Oil Corporation has been in business 22 years. Obviously, we have been well accepted by the consuming public or we would not have gone from one station in 1958 to 95 stations today. I believe very strongly that it should be the customers who should decide if they want to buy gasoline at a full-service dealer or at a price marketer, and thus determine the eventual success or failure of Pilot Oil Corporation. If Pilot, as a company in our free enterprise system, is to fail and not be able to continue in business as a viable economic entity, then I would hope that it would be because of our failure to service these customers, rather than legislation such as H.R. 6722 which would put us out of business.

I appreciate very much the opportunity to appear before this Subcommittee today, and to tell you a little about our company and what affect this legislation will have on us, and I will certainly be glad to answer any questions that you might have.

Mr. **Bedell**. I do not think anybody here has a desire to put you out of business. I think you have a somewhat unique situation. You are aware of that, I presume.

Mr. **Haslam**. Yes.

Mr. **Bedell**. You have indicated you are paying a 47-percent tax rate, so you have apparently made good profits and paid dividends.

Mr. **Haslam**. That is why you want to be in business.

Mr. **Bedell**. If you were the Marathon Oil Co., and you had a choice of selling gasoline at the same price to a dealer or selling to Haslam—or Pilot Oil Co. and you knew that if you sold to the other dealer it would not result in any extra income to you, but you knew that if you sold to Pilot, it would result in extra income because the dividends you would get from Pilot from their operations it would seem, under decontrol, there would be incentive for Marathon Oil Co. to put the other person out of business and keep you in business. Do you see the concern?

Mr. **Haslam**. Yes; I can understand that, Marathon has treated people fairly during this period of allocation, I think the oil companies will be responsible and not try to eliminate people. I can understand your concern, sir.

Mr. **Bedell**. We are not trying to say there are bad motives. The situation is, the system is built by profits. There would be something wrong with Marathon Oil Co. if they were not interested in maximizing their profits, the fact is they can make more profit selling gasoline to Pilot Oil Co. at some other price, because they will get dividends back from what they sell to you. I think our committee needs to look at your problem. It is a unique problem but I hope you would recognize as well, the concern that exists here and it is not whether Marathon is good or bad, our job is to try to legislate in a manner that will maintain competition in our society, which will enable us to have minimum prices to the consumer. This small business committee is partly concerned about making it possible for people to do just what you have done.

**Mr. HASLAM.** I think the fact Marathon has an interest in Pilot, is because they are an investor in the company, we are under no obligation to buy gasoline from them. They have been the best supplier. I think companies like us, should be encouraged to expand their operations, not be put under legislation.

**Mr. BEDELL.** It would not particularly matter to you whether that investment was by IBM instead of Marathon?

**Mr. HASLAM.** Yes, sir, it is; I think their relationship is just a stopover. We buy gasoline from them but we are under no contractual obligation. We have bought gasoline from other people in the past. We will in the future.

**Mr. BEDELL.** If something could be worked out so they would sell their stock to someone else, you still have the opportunity to operate that company and still be in a position to——

**Mr. HASLAM.** Don't put us on the spot where we have to find a buyer for the stock.

**Mr. BEDELL.** Certainly Marathon would be in that position.

**Mr. HASLAM.** I can't speak for Marathon. I think the important thing is in all these conversations today, I have been in the business for 22 years and company-operated stations is the cheapest way to operate. Our average margin is 3.65 cents, the average margin of all the people in the United States, so we are delivering this gasoline to the consumer at the cheapest price.

**Mr. BEDELL.** You really were not a company-operated station. Weren't you an independent operator?

**Mr. HASLAM.** We are an independent operator, but our only business is the operation of these service stations. We have 95 stations and a manager at each station and three or four employees. We have no other business. We are just a retailer of gasoline.

**Mr. BEDELL.** Do you think people who specialize in the retailing of gasoline can be very efficient at it?

**Mr. HASLAM.** A chain operation like we have is the most efficient way to sell gasoline.

**Mr. BEDELL.** What do you mean?

**Mr. HASLAM.** We have 95 stations, a manager at each station. We do not have dealers. These people are employees of Pilot Oil Co., that is, the divorcement legislation would make it illegal for anybody covered under this bill.

**Mr. BEDELL.** The only problem, well, you have a unique problem as far as this legislation is concerned because of the fact that Marathon Oil owns half of your stock. Otherwise, nobody thinks that there would be anything questionable about it.

With Marathon Oil owning half of your stock, there certainly could be times in the future where it would be a great incentive for them to favor you compared to others because of the fact that they would get dividends and get back extra money.

That is the concern.

Mr. HASLAM. I also hope you can understand our concern; we have never had a dealer. We have always operated this and paid our taxes and tried to be good citizens. The last year I spent, not half of my time, but a great deal of my time going around defending our right to stay in business.

Mr. BEDELL. I think you should have that right to stay in business. I have some question as to whether it is in the best interests of anyone for Marathon to own half of your stock in the future.

You have a unique concern, and we appreciate your being here. Thank you very much.

Our next witnesses are the Chevron agents, Jack Popham of Chartersville, Ga.

I understand you have some other people with you, Mr. Popham. We hope you would hold your testimony as short as possible.

## PANEL CONSISTING OF JACK POPHAM, CARTERSVILLE, GA., ACCOMPANIED BY DAN SMITH, GRIFFIN, GA.; DON GORMAN, HOPKINSVILLE, KY.; JACK PEDLEY, PRINCETON, KY., CHEVRON AGENTS ASSOCIATION, INC.

Mr. POPHAM. We will certainly try, sir.

First of all, I would like to introduce myself.

I am Jack Popham from Cartersville, Ga.

On my right is Dan Smith from Griffin, Ga. On my left is Don Gorman from Hopkinsville, Ky., and on my extreme left is Jack Pedley from Princeton, Ky.

Each of us is a commission agent with Chevron Oil Co. and we are members of the board of directors of Chevron Agents Association, Inc., with the exception of Mr. Gorman, who is our executive director with our agents association.

I would like to explain a little about what a Chevron commission agent is.

The Chevron commission agent sells Chevron products for a commission without taking title to the product as opposed to a wholesale jobber who does buy from a supplier, takes title to the product and adds his own margin of profit to that.

We operate essentially in the marketplace the same as a jobber performing the same functions essentially.

The marketplace, as we see it as it relates to us, is that we receive our product from our supplier. We in turn resell that product to service station dealers and other retail outlets, farmers, commercial agricultural, industrial customers who are all primarily small businessmen.

With rack pricing put into effect as it is written into this bill, we see the following effects on our individual businesses:

These dealers and retailers whom we now supply would be able to go directly to our supplier or any other supplier and buy essentially at the same price we are getting the product at this point.

That would bypass us and remove these profits from our present business operation.

The effect that would have on us as we see it would be this: As a general rule service station dealers constitute about 50 percent of our profits or more depending on the individual circumstances, we would then have to look at the other end of our business to acquire profits with which to stay in business; namely, to the farmer and small businessman.

It would mean one of two things: These small business people would either have to pay us an increased price or we would have to go out of business and elect not to serve those people, because in a lot of cases that would not leave enough volume for the commission agent to survive.

We see that it would cost those small business people more to operate. If we understand the regulations as they are today, we could, if we are not involved in the retail sales or supply of retailers, charge 18 or 20, up to approximately 23 cents a gallon profit as opposed to a normal jobber maximum of 7.7 at this time.

We point out at this point that a commission agent, generally speaking, operates on considerably less than 7.7, normally about 2½ cents per gallon.

We see divorcement as having an adverse effect possibly on the consumer down the road, because we feel that rack price will essentially take the place of what is now in place as a wholesale price, be it a tankwagon or whatever, and those profits that are now enjoyed by agents and jobbers will be enjoyed by major oil companies and the rack price will not save the dealer or the consumer any money, in our opinion.

With that, sir, I will end my comments, and we would be glad to try to respond to any questions you might have.

Mr. BEDELL. Thank you. We will make your written comments a part of the record.

[Mr. Popham's prepared statement follows:]

## PREPARED STATEMENT OF JACK POPHAM, PRESIDENT, ON BEHALF OF THE CHEVRON AGENTS ASSOCIATION, INC., HOPKINSVILLE, KY.

Mr. Chairman, my name is Jack Popham. I appreciate your providing this hearing and the opportunity to present the views of the Chevron Agents Association, Inc. Chevron Agents Association, Inc. represents the interests of 227 Chevron commission agents located in the states of Kentucky, Georgia, Alabama, Mississippi and Florida. For the purposes of the present legislation pending before this Subcommittee, a commission agent, although different from a jobber, performs the same function as a jobber at the wholesale level of distribution. The major difference between a commission agent and a jobber is that a jobber takes title to the product, whereas a commission agent does not, thereby receiving a commission direct from the refiner, or in our case, Chevron.

Our major purpose in appearing before this Subcommittee is to explain fully the effect this bill will have not only on jobbers and commission agents in these United States, but upon the customers of jobbers and commission agents. In determining this effect, we feel it necessary to explain to the Subcommittee the basic market place for motor petroleum products. We are sure the Subcommittee is aware that refiners sell to jobbers and commission agents, who then in turn sell to service station dealers who market directly to the purchasing American driver. However, the Subcommittee should be made aware that there is another consumer group which makes up the motor petroleum marketplace in the United States. This consumer group is also a direct customer of the jobber and commission agent. This consumer group is made up of farmers and small businessmen. It is this very group of consumers which we feel will be directly effected by the provisions of H.R. 6722 as it is now drafted.

It is informative to understand the historical marketing concept which gave rise to the marketing base of jobbers and commission agents. Historically, jobbers and commission agents were distributors at the wholesale level for refiners products.

Traditionally refiners would find a jobber or commission agent to market their products, and assign a territory to him along with a customer base. This customer base usually contained a mix of service stations, farm accounts and other small business accounts. This marketing concept although started by the refiners in their assignment of marketing areas to jobbers and commission agents has been incorporated into the allocation control marketing concept as provided by the Department of Energy. Without question, for most jobbers and commission agents the service station dealer and the high volume his purchases represent, provide most of the revenues generated by jobberships and commission agents, whereas farm accounts and small business accounts are marginal if not unprofitable business. H.R. 6722 as presently drafted would have a very serious economic effect on this distribution system.

We now will attempt to express our thoughts on the various provisions contained in H.R. 6722.

Under H.R. 6722 any purchaser of petroleum products will be allowed to purchase directly from the refiner at the same unit price that commission agents, jobbers and other persons situated at the wholesale level can purchase. Individual units are defined under H.R. 6722 as (1) dealer tankwagon or transport load; (2) railway tank car load; (3) barge load; and (4) pipeline tender. Pursuant to the provisions of H.R. 6722 it would be unlawful for a refiner to sell motor petroleum product at any point of transfer at a different price to any purchaser of the same unit. Although the bill contains an attempt to give a cost purchasing break pursuant to the Robinson-Patman Act, due to the nature of oil refining it would be very difficult to picture a volume purchase equal to a true economy to scale to provide a price discount. Essentially, the concept of rack pricing allows the service station customer of the jobber and commission agent to go direct to the refiner to purchase motor petroleum product. In the practical circumstance it would be reasonable to assume, that most large service station dealer customers could eventually become sophisticated enough to either buy their own dealer tankwagon loads. This bill could effectively take away a major part of the volume marketing base of jobbers and commission agent. In effect, potentially all a jobber or commission agent could be left with is the small consumer accounts such as farm accounts and small business.

As noted previously, most of these accounts are marginally profitable at best. Obviously, if a jobber or a commission agent no longer has his large service station dealer accounts to rely on, his general revenues go down and there is less of a customer base to spread his cost of business over. Accordingly, to make up for the loss in revenues higher prices must be passed along to the remaining farm accounts and small businesses. In effect, the bill if it allows jobbers, commission agents and service station dealers to purchase at the same unit price will eventually cost farmers and small businessmen more for petroleum products. This higher price must be passed along in the normal chain of commerce where it will eventually rest on the American consumming public. Even worse potentially, is the fact that many jobbers and/or commission agents in the marketplace may go out of business altogether, since the loss of substantial revenues will directly effect profitability of what is already a very marginal marketplace for some.

Our own Chevron commission agents have not had a commission increase of any substance in some seven (7) years. Needless to say, the cost of doing business has increased considerably over this period of time. In an already eroding business trend, commission agents at least in the Chevron system may disappear altogether if their customer bases are eroded further by service station dealers buying direct from the refiner.

The concept of open supply under H.R. 6722 also forbears badly for commission agents and jobbers. Essentially open supply would mean that all purchasers could buy freely from any refiner in the marketplace. Again, the small unprofitable farm or consumer accounts under open supply provision would be the first to be cut from any jobber or commission agent's customer list. Congress should realize that many of these small accounts are being serviced now directly due to Department of Energy allocation control mandate, rather than due to their profitability. In short, unless the rack pricing and open supply provisions are considerably tempered from their present effect, H.R. 6722 could have a disastrous effect upon farms and small businessmen, and of course upon the jobber and commission agent. Essentially, if H.R. 6722 is passed there is a tremendous possibility that the jobber and/or commission agent will either pass higher petroleum prices along to farmers and small businessmen, or even potentially worse disappear from the marketplace altogether. Needless to say, in many of our rural areas if the jobber and/or commission agent disappear from the marketplace, the distribution of motor petroleum products will be potentially nonexistent and have disastrous consequences for commerce in general.

The divorcement provisions of H.R. 6722 call for all refiners, except those refiners who produce less than 175,000 barrels a day or refiners who obtain in a calendar year more than 70 percent of their refiner input of domestic and imported crude oil from other producers, to be barred from operating service stations. As the Congress well knowns there are two basic research projects which have been circulated widely among oil marketing circles in this country. The first supporting divorcement, is a study entitled "The Case for Legislative Relief from the Impending Destruction of Small Business in Competition in the Gasoline Industry." The basic thrust of this study alludes to a view point that the large refiners have driven the small service station operator from the petroleum marketplace. However, a Department of Energy study in a similar analysis of marketing data refutes the study recommending divorcement. This Department of Energy study is entitled "Trends In Company Stores." This Department of Energy study states that the results of the study of marketing data do not support the divorcement of refiner operated stations as a solution to the problems confronted by dealers in today's marketplace. After studying both reports, we the Chevron Agents Association find it more plausible that the alleged reduction in small business from operating service stations is due to numerous economic reasons far more than any alleged unfair trade practices of the large refiners. These economic reasons are (1) OPEC's monumental price increases for crude oil; (2) a shift in consumer buying habits from brand loyalty to the lowest price on the street; (3) the increased use of self serve or gas only outlets; (4) the impact of inflation on all costs of doing business as a single station operator; and (5) sharply increased cost for service station construction making the barriers to entry in the service station business extremely high.

Finally, in final reflection we would point to a possible economic scenario resulting from passage of H.R. 6722 as presently drafted. If rack pricing and open supply are adopted as presently stated, we feel that it is possible Convenience Store operations and big retailers at the service station level will be able to purchase from the rack at a better price due to their ability to buy a larger unit volume. Since refiners will be out of direct competition, the Convenience Store operation and the large owners of service stations will become the competition for the small single service station dealer. Eventually in a free market, with an ability to buy at a better unit price, the Convenience Store and large chains of service station dealers will be able to offer a better price to the petroleum purchasing consumer than the single small service station dealer. Eventually one could count on many independent small service station dealers going out of business due to strong competition from Convenience Stores and large independent service station chains.

Eventually, with refiners out of the marketplace and the small independent single service station operator having been driven out of business due to fierce competition, there would be no one left except the Convenience Stores and the large independent service station dealers. It is not a flight of fancy to assume that when this event occurs, the purchasing consumer will pay more, since large markets could be controlled by these chains of Convenience Stores or large independent service station operations. In effect, H.R. 6722 could allow for the mass merchandising of the oil marketing industry much like the mass merchandising done by large chains of department stores. In a sense, we are possibly substituting one controlled economic giant for an uncontrolled economic giant. In the long run we feel that there is no relief for the small independent service station dealer under H.R. 6722. Additionally and more importantly, there will be no relief for the purchasing American public in the long run, with less competition due to small service station dealers having been driven out, higher prices would soon result.

Mr. Chairman, this concludes our formal statement. If there are questions I will gladly respond; or with your permission ask one of these gentlemen seated with me to resond.

With me to assist in responding to your questions, if you will permit are Don Gorman, the Executive Director of the Chevron Agents Association, of Hopkinsville, Kentucky, John C. Pedley, of Princeton, Kentucky, Dan Smith of Griffin, Georgia and Max Dixon of Cordele, Georgia.

Should there be any questions raised that might need clarification as it relates to our position, we would appreciate an opportunity to respond in the future. Finally, we appreciate being allowed the oportunity to express our views on H.R. 6722 and urge a careful study and proper reflection upon the very grave and serious matter involved in legislating on our national oil petroleum product distribution system.

Mr. **Bedell**. I am aware of some of your concerns, as you well know.

I think some of them have justification. You say that if the margin is lower beyond the rack, then the major oil companies would raise the price at the rack?

Mr. Popham. Without any pricing controls.

Mr. Bedell. What is to prevent them from doing that anyway without price controls?

Mr. Popham. Competition.

Mr. Bedell. How would the competition be different whether there is rack pricing or whether there is not rack pricing?

Mr. Popham. I see it this way: Jobbers and agents traditionally have supported the dealers that they supply. In times of plentiful supply they are some of the first to reduce the cost to the dealer. They help dealers in various other ways, such as supplying equipment and any number of things; by the way, I might add, I don't think commission agents and jobbers will be doing these things under a rack pricing situation.

The dealer will have to incur those costs.

Mr. Bedell. I don't understand how rack pricing would change the competitive situation among the suppliers of gasoline at the rack. How would there be more incentive or lack of incentive for raising prices, under decontrol?

Mr. Smith. I think the tendency would be to put people like us out of business, is what it would do in my specific concern.

Mr. Bedell. I understand that concern you have, but that was not my question.

My question was, he indicated that he thought that the rack pricing would give the suppliers at the rack reason to increase prices. I don't understand how that would have any effect whatsoever on the tendency at the rack for the supplier to increase prices.

Mr. Smith. I got lost there somewhere. What would have an effect on it?

Mr. Bedell. Do you understand my question? I am not trying to be difficult. I am trying to learn.

Mr. Popham. I would assume at this point my 2½ cents is included in a tankwagon price. What would stop my supplier from charging that same price at the rack and paying that 2½ cents? The dealer is already paying it now.

Mr. Bedell. Nothing would stop him from doing it under decontrol, that I can see, and that is one of the concerns of decontrol, especially if we have a short supply situation as we have had in the past.

I don't see how that would, maybe we are getting off the subject.

Mr. Popham. I don't see how that puts the dealer in a more competitive position and would not save the consumer anything. It puts me out of business.

Mr. Bedell. Well, I understand your concern. However, we have all those concerns as we come into decontrol. That is our problem.

I have no further questions.

Mr. Rovner. Do you physically take the product?

Mr. Popham. Let me make one further statement.

Involved in the deliveries to the small consumer accounts, farmers, and so forth, that is a very costly operation. It is very costly, and if we are limited to that, it will severely hamper our operation.

Mr. Bedell. I understand your concern.

Mr. **Rovner**. I have one brief question.

On page 5 of your prepared testimony, you suggest that under the open supply provisions of the bill, that would amount to decontrol of gasoline supplying.

I think that was clearly the intention of the authors of the bill, that it would exist in a time of decontrol but you then go on in your statement and say the small unprofitable farm or consumer accounts would be the first to be cut from any customer list.

You then go on to say, "Many of these small accounts are being serviced now directly due to DOE allocation control mandate."

Can we infer from that statement that your suggestion, there should be continued allocation and continued control of products?

Mr. **Popham**. Would you like to comment about that, Don, please?

Mr. **Gorman**. We can combine those two points, if I may, sir. The concern here is that the rack pricing will eliminate the distribution network of jobbers and of commission agents. It is that efficient distribution network which provides the fuel to the customers where they want it at what we believe to be the lowest possible cost.

If we have open rack pricing and that anyone can go to the rack that eliminates from these commission agents and jobbers a very large chunk of their business, leaving the unprofitable smaller accounts.

Many of our agents live in rural areas and supply farmers in 200 and 300 gallon quantities, and it is expensive to do that. That is the point Jack was making about increasing costs because, if we have eliminated, if you will, the large dealers that we supply who can afford to go to the rack themselves, then we are left with the smaller unprofitable ones, and we will charge more.

The second point has to do with deregulation and allocation. Indeed, there are customers that are supplied with gasoline under the order of the Department of Energy and against the wishes of the prime supplier.

Those customers may well look to decontrol, deregulation in 1981 as a hazardous thing.

Mr. **Bedell**. If I understand the previous talks I have had with you, the dealers you are supplying are Chevron dealers?

Mr. **Gorman**. Yes, sir.

Mr. **Bedell**. If it were not for the open supply problem, then the rack pricing problem would not be a great problem to you, because you would still be where you would be supplying dealers.

Mr. **Gorman**. The dealers are Chevron dealers, sir. Those are not the only customers of the Chevron agents. Chevron agents supply other customers, such as small businesses and farmers, and even service stations that sell unbranded.

Mr. **Bedell**. I understand, but my statement is, if I understand it correctly, it's the combination of the two that give you the trouble rather than either one or the other of the rack pricing, plus the open supply, since they are Chevron dealers.

Mr. **Gorman**. That gives Chevron dealers a particular problem, the combination.

**Mr. Bedell.** My statement is that where the bill gives you problem in regard to your dealers is because of the combination of the rack pricing plus the open supply.

**Mr. Gorman.** Yes.

**Mr. Bedell.** The rack pricing would not be a particular problem if it were not for the open supply provision as well, which then gives them that opportunity to buy at the rack.

Anybody disagree with that?

**Mr. Popham.** Does that mean if we only supply Chevron dealers but we have rack pricing without open supply, does that mean my dealer can go to Chevron to get his supply, Chevron is willing to take it?

**Mr. Bedell.** That would not happen, would it?

**Mr. Popham.** It would if Chevron thought they could get that 2½ cent commission, yes, sir.

**Mr. Bedell.** Somebody is going to have to do the delivery, are they not? You are performing the delivery service?

**Mr. Popham.** That is correct.

**Mr. Bedell.** You perform it for Chevron for a commission.

**Mr. Popham.** That is correct.

**Mr. Bedell.** I don't really see where that, maybe I don't understand the problem completely, I don't really see where that would be a problem.

**Mr. Popham.** Chevron could sell at the same price, eliminate my 2½ cent commission, and their cost of delivery is less than 2½ cents, they say.

**Mr. Bedell.** They can do that with or without rack pricing under decontrol. If they find a way to do that with decontrol, there is nothing stopping them from that anyway.

**Mr. Popham.** The only way my dealer would leave me and go to them is for a better price.

**Mr. Bedell.** That would be true regardless of whether there was the rack pricing or not.

We have a problem. Those bells mean that there is not only one vote on the House floor but two votes.

That means that I will have to go for this vote, which has been not quite 5 minutes, another 10 mintues and 5 minutes until the other vote is completed so I fear that it is going to be 30 minutes before we reconvene the committee.

We have a whole panel of about five people for our last witnesses.

Is it possible for our last panel, Mr. James Heizer, Virginia Gasoline Retailers Association, and W. H. Ligon, Texas Service Station Association, Glenn Nilsson, Lone Star Service Station Association, and Dan Usner, Louisiana Service Station Dealers Association, is it possible for those people to return at 10 minutes to 1 for us to complete our hearing?

Would those that are scheduled to testify stand up? How many of you cannot be here at 10 of 1? Would you raise your hands?

OK, after Mr. Hubbard is through we will recess until approximately 10 minutes to 1. I will get back just as quickly as I can.

**Mr. Hubbard.** We both need to go vote. I do have some questions I would like to ask my friend, Jack Popham, but I would prefer to ask them after these two votes.

Mr. **Bedell**. If you want to come back they will have to remain then. I think it will take us about 30 minutes.

Mr. **Hubbard**. I would hope that he could because you and I are going to miss a vote.

Mr. **Bedell**. The subcommittee is in recess until about 10 minutes to 1.

[A recess was taken.]

Mr. **Bedell**. Could we get the Chevron people back to the witness stand?

At the time of our recess, Congressman Hubbard had some questions that he wanted to ask, and I should mention that it was at Congressman Hubbard's request that the Chevron agents are here.

Congressman Hubbard?

Mr. **Hubbard**. Thank you very much, Mr. Chairman.

Thank you for the opportunity to ask questions of Mr. Jack Popham.

Much has been made of the point of jobber or agent-owned service stations and the unfair competitive nature of supplying your own as well as independent stations.

Do many jobbers or agents own stations?

Mr. **Popham**. Since Mr. Smith is more heavily involved in that kind of operation, I would like to refer that question to him, if I could, sir.

Mr. **Smith**. Yes; they do.

Mr. **Hubbard**. From your personal knowledge, Mr. Smith, what percentage of such people own stations?

Mr. **Smith**. I would guesstimate about 75 percent.

Mr. **Hubbard**. Do we have Mr. Smith's name in the record?

Mr. **Bedell**. Yes; we do.

Mr. **Hubbard**. Do those who own them always operate them?

Mr. **Smith**. No; they don't.

Mr. **Hubbard**. What percentage of jobber or agent-owned stations would you estimate are listed out to independent businessmen?

Mr. **Smith**. I would guesstimate again probably about 95 percent.

Mr. **Hubbard**. If jobbers or agents own stations and do not use them to compete with any other operators in an unfair manner, then why do they buy the stations?

Mr. **Smith**. Well, for two or three reasons. One would be for investment and to control your product, to have a way to distribute your product.

Mr. **Hubbard**. Lastly, on this particular phase, why own those stations at all?

Mr. **Smith**. Well, it is good business practice to own your outlets and to control your product, have a way to move your product and that is the point, I think people in this situation have always looked after their dealers.

In my particular case, I would like to make the point that I have somewhere in the neighborhood of 300 to 400 farming industrial accounts that I also have to serve, and not a lot of times on a very profitable basis.

Your retail outlets, that is where the rack pricing comes into play, and we cannot afford to serve those farming industrial accounts without retail accounts also.

Mr. **Hubbard**. Thank you very much.

Mr. Popham, again, what protection, if any, do service station owners need in their dealings with the prime suppliers?

Mr. **Popham**. I would like to refer that question to Mr. Gorman, please, sir.

Mr. **Gorman**. At the present time, and we will speak both before and after control, with the allocation and price rules that are in effect today, the dealer needs little protection. By that, we mean against any predatory action on the part of the suppliers.

After decontrol that may well be another story, however, sir.

Mr. **Bedell**. Would the gentleman yield?

I think you made a very, very important observation there, and this is one of the concerns I have had over the report by the Department of Energy.

The question that exists with decontrol, I think, is what protection will be needed and what the situation will be with decontrol. I appreciate that point.

Mr. **Gorman**. I might just add, sir, that I speak for the vast majority of the Chevron Agents Association who say that they have serious reservations about decontrol and, in fact, if put to a vote would vote against it right now.

Mr. **Hubbard**. Mr. Gorman, will the prime suppliers continue to honor supply obligations after decontrol in 1981?

Mr. **Gorman**. I guess that is the principal concern of the agents and jobbers and indeed of the station operators and owners themselves.

We know that there are certain situations where under the emergency allocation measures, the Department of Energy, as part of its charter, encouraged people to go into business, and since 1974 a substantial number of people have gone on to the gasoline retail business and they have had in some cases their suppliers given to them by the Department of Energy under existing regulations.

Some of these prime suppliers are not happy with that situation and indeed have indicated that after decontrol they intend to do something about that, that they literally may well cut off their supply and not engage in any supply contract after decontrol, so there is a concern.

Mr. **Hubbard**. Lastly, what will happen in your opinion to these new independent operators who have gone into business since 1974 and whose supplier was chosen by DOE?

Mr. **Gorman**. I think that there are some gasoline concerns, some firms, major refiners, who probably will just go right along and supply those people whose attitude and position has not been one of total opposition to these new stations, and particularly those new stations that have gone in on an unbranded basis, but I think there are other refiners.

Chevron is one who has taken a rather aggressive posture against what they term mandated gallonage; that is to say, gallonage that is mandated by DOE assignment order, and have indicated that if and when those assignment orders expire, that they intend not to renew supply contracts, so there is a serious concern on our part and on the part of some of our customers.

Mr. **Hubbard**. Thank you very much, Mr. Gorman, Mr. Popham, Mr. Smith.

Mr. Chairman, I have sat in on some conversations with friends of nine, Jonathon Goldberg of Louisville, Ky., Jack Pedley of Princeton, Ky., and other constituents of mine who share their concerns with me regarding H.R. 6722 and related bills.

The ones I have talked with from my home State of Kentucky do have rapport with and are in sympathy with the position taken by the Chevron Agents Association and their people who have testified here today.

My district is composed mostly of farmers and coal miners. Indeed, one of those farmers happens to be my uncle, Mr. J. D. Hubbard from the little village of Shady Grove, Ky., where my father was born and raised, and his supplier is Jack Pedley, who sits at the table here, a Chevron agent from Princeton, Ky., so you might say in addition to representing or thinking of all the farmers, I even have a family interest here, because my uncle depends upon being supplied with gasoline by Mr. Jack Pedley who has shared with me over a period of hours during the past month and a half his thoughts about this particular legislation.

Mr. Chairman, my high regard for you and other members of this subcommittee leads me to believe that you all will give every consideration to the testimony given by these friends here, including Jack Popham, the president of Chevron Agents Association, Inc.

I thank you again for allowing me to ask these questions and to indicate that I hope that their views will be taken into consideration before the subcommittee takes a vote on this controversial bill.

Mr. **Bedell**. Thank you, Congressman Hubbard.

I think they have some legitimate concerns which I recognize. I take it from their testimony they have problems anyway with decontrol and I think there are some serious concerns that you have to look at there as well. The problem is how you protect people from some of their concerns without aggravating some of their other concerns.

Mr. **Hubbard**. Since you and I both represent thousands of farmers, I know you will be looking out for the farmers' interests in this legislation also, and I appreciate that.

Mr. **Bedell**. I sure will. I am very fortunate, though, in that my uncle isn't a farmer, so that I don't have that conflict of interest.

Mr. **Hubbard**. My uncle has never contributed to my campaign. He couldn't afford to.

Thank you very much again for allowing me to be with you today.

Mr. **Bedell**. We appreciate your being here.

Mr. **Popham**. I would like to thank Congressman Hubbard for his assistance and I would like to thank you and the rest of the panel members for your courtesy.

Mr. **Bedell**. Thank you, Mr. Popham.

Our next panel is a panel of witnesses, Mr. James W. Heizer, Virginia Gasoline Retailers Association; W. H. Ligon, Texas Service Station Association; Glenn Nilsson, Lone Star Service Stations Association; Dan Usner, Louisiana Service Station Dealers Association.

We appreciate all of you being here. I think we would ask that you introduce yourselves.

Start over here so we know who is who.

## PANEL CONSISTING OF JAMES W. HEIZER, EXECUTIVE DIRECTOR, VIRGINIA GASOLINE RETAILERS ASSOCIATION, ACCOMPANIED BY RICHARD M. BING, VGRA, GENERAL COUNSEL; W. H. LIGON, MANAGING DIRECTOR, TEXAS SERVICE STATION ASSOCIATION; GLENN NILSSON, EXECUTIVE DIRECTOR, LONE STAR SERVICE STATIONS ASSOCIATION; AND DAN USNER, LEGISLATIVE DIRECTOR, LOUISIANA SERVICE STATION DEALERS ASSOCIATION

Mr. **Bing**. I am Richard M. Bing, general counsel to the Virginia Gasoline Retailers Association.

Mr. **Heizer**. I am Jim Heizer, executive director.

Mr. **Nilsson**. I am Glenn Nilsson, executive director of the Lone Star Service Stations Association.

Mr. **Ligon**. I am W. H. Ligon, managing director of the Texas Service Association.

Mr. **Usner**. I am Dan Usner, legislative director of the Louisiana Service Station Dealers Association, and also a Shell dealer.

Mr. **Bedell**. Do you have an order; are you organized?

Mr. **Heizer**. My name is first on the list so I will kick off.

Mr. **Bedell**. Hold it as short as you can. We don't know when we will be called back to the floor of the House for votes and I do have another meeting at 2 o'clock, if I can make it.

Mr. **Heizer**. We have endeavored to keep our statement as short as possible. Some of it, I feel, is very necessary to bring to the attention of the committee.

Let me cover some of the very important parts of it.

As you know, I have appeared before this committee before and our association in Virginia represents some 1,300 of the independent branded retailers, some 40 percent of the independent service station operators in Virginia.

As far as my own qualifications, I have been in this business for over 30 years, 6 years as a dealer and the past 25 years as executive director of this association, and throughout those 25 years have appeared before many congressional committees, both House and Senate, before Tom Steed, Jimmy Roosevelt, Mr. Henry Gonzalez, his committee and yours.

My comments are in support of H.R. 6722.

As I told this committee previously, the U.S. Department of Commerce, in 1972 reported that there were 4,648 service stations in Virginia with 19,952 employees, for a total of 24,600 wage earners earning their living in this business.

Four years later, the same Bureau of the Census reports only 3,237 service stations in Virginia employing 17,161 for a total of 20,398. This means that in those 4 short years 1,411 retail dealers were out of business along with 2,791 employees, for a total job loss of 4,202.

Much of this reduction in the number of retail service stations and the resulting loss of more than 4,200 jobs may be traced directly to a coordinated effort by many individual refiners to force many smaller retailers pumping less than 30,000 gallons per month out of business, and replacing these smaller retailers with refiner-operated "gas and go" outlets retailing direct to the consumer.

When I hear the concerns expressed by Mr. Haslam and some of the others, that might be seeking other employment if this bill is enacted, I would hope the members of this committee will consider the plight of our people who are already out of work in Virginia and others who may be put out of work in the future.

According to Mr. William C. Lane, Director of the Office of Competition of the Department of Energy, such a loss in the number of retail service stations and the dealers who operated them can be attributed to the overbuilding of service stations by the major producers and refiners in the 1950's and 1960's as well as the harsh effect that the DOE regulations have on branded service station dealers.

This thesis is set forth by the person who is responsible for promoting and maintaining competition in the petroleum industry. Little emphasis appears to be placed on the growth of refiner-operated stations in this country and the advantages that they enjoy which prevent the service station dealers from being able to compete on an equal basis.

Since the oil embargo of 1973–74, I can name only a maximum of two new retail outlets which have been built in Virginia which were leased to a dealer.

One of these is located in northern Virginia and the other is in Tidewater. These stations are currently under construction and are only being leased to dealers because of the Virginia Petroleum Products Franchising Act which, among other things, prohibits the major producers and refiners from company operating any station which is located within a mile and a half of any existing dealer-leased station.

Had it not been for the wisdom of the Virginia General Assembly who recognized that the major oil companies were seeking to gain total control of the flow of petroleum from the wellhead to the gas tank, the growth and market share of refiner-operated stations in Virginia would be astronomical.

Virginia was one of the first States in this country to enact a divorcement type law and it was done in the face of uncomprehendible political pressure exerted by the major oil companies.

While Virginia's divorcement legislation was being considered by the Virginia General Assembly, the oil companies argued that the operation of retail gasoline outlets by the major producers or refiners was in the public interest as they were able to market the gasoline at such low prices.

VGRA countered this argument by asserting that any price advantage to consumers by the sale of gasoline at company-operated stations would be short lived and that in time the company-operated stations would increase their prices equal to or greater than those other outlets once they have cornered a significant share of the market.

If you will refer to the attached exhibit, you will find that today in Virginia we can see that the assertion of VGRA was correct.

As an example, Crown Central Petroleum Corp. is selling regular gasoline at $1.22.8 while neighboring Exxon dealer operated stations are selling their regular gasoline for as low as $1.16.8. I just wish Chairman Scheuer could be here to go over this with us.

Crown, which only maintains company-operated stations in Virginia, for the longest time held its prices at the low end of the spectrum for all retail prices. However, during the early part of 1979 when gasoline was in short supply, Crown began to significantly increase its retail price until it has reached its current high level.

Crown unilaterally ousted all of its dealers in 1975 because they claimed that the Crown dealers were making too high a profit on their gasoline sales. Although Bill Lane and the Office of Competition feel that predatory practices have not occurred in the petroleum industry, I can't think of an act which is more predatory than that of Crown in ousting its dealers, and all of the stations in Virginia are now operated by the company rather than by dealers.

As of December 31, 1978, Crown was posting a retail price of 59.9 cents per gallon for leaded regular. As of May 31, 1980, Crown was posting a retail price in Virginia of $1.22.8 for the same grade of gasoline. This is an increase of 62.9 cents per gallon in the 17 months since December 31, 1978.

I monitor for VGRA the wholesale prices for the major oil companies marketing in Virginia; please see exhibit A.

As you will note, the average wholesale price increase of these 12 companies in Virginia was 49.8 cents per gallon. It should be noted that most of these companies only market through dealer operated stations in Virginia, and very few company-operated stations of those.

Thus, for the corresponding 17-month period Crown increased its retail price by 13.1 cents above the average increase of these 12 oil companies in Virginia.

Congressmen, based on this evidence, I ask:

"Can anyone honestly and in good conscience assert that the activities of Crown, by the pricing of its gasoline at company operated stations, to be in the public interest?"

Regardless of what Bill Lane, DOE's Office of Competition or the oil companies might argue, I would strongly assert that these company-operated stations are not the friends of the consuming public.

Therefore, it is very clear to those of us in Virginia that the argument that the operation of gasoline retail outlets by company employees is in the best interest of the consuming public, simply does not hold water.

At the present time States such as Maryland, Hawaii, the District of Columbia, Connecticut and Delaware have all enacted varying forms of retail divorcement legislation. At least 10 other States are considering such legislation. Enactment of H.R. 6722 would preempt these State statutes and simplify and standardize the rules that apply to gasoline marketing.

It would prevent the vertical integration of the major oil companies and thereby prevent the monopoly which would surely arise when oil companies are able to control the flow of petroleum from the wellhead to the gasoline pump.

The provisions of H.R. 6722 relating to rack pricing and open supply are of extreme importance to not only the dealers in Virginia but to the service station dealers nationwide. To a large extent the disparity in retail prices between the service station dealers, the jobber-operated stations, and the company-operated stations,

best copy available

because Part I of DOE's Title III report is the most current, thorough and objective study of this issue prepared to date, my remarks today concentrate on the results of that study.

In its report, DOE examines three important questions: (1) does an unfair acquisition cost advantage exist; (2) what is the likelihood that any such cost advantage would be used to injure independent dealers; and (3) are there any other explanations for the perceived plight of independent dealers? Because these three questions go to the heart of the current debate over the competitiveness of the retail level of the petroleum industry, I would like to share with you the Department's views on DOE's interim findings in each of these areas.

In order to determine whether or not integrated firms have an unfair cost advantage over independent dealers, DOE compared the acquisition costs of motor fuel supplies to independent dealers and company-operated outlets. While the acquisition cost of independent dealers is simple to ascertain, the absence of an "arms-length" transaction between refiners and their marketing affiliates requires a more complicated, and consequently less reliable, method of calculating their acquisition costs. In essence, DOE started with the price at which refiner-operated stations sold their motor fuel supplies to the public and then subtracted out the estimated retailing costs incurred in selling those products. The resulting "netback" to the refiner was then compared to the price a refiner would receive on sales to independent dealers to determine whether refiner-operated stations received a cost advantage over independent dealers. Due to time and data constraints, DOE has only been able to perform this analysis in the Fort Wayne, Indiana metropolitan area. That analysis tended to indicate that refiner-operated stations did not receive any unfair cost advantage.

Several possible criticisms of this methodology should be addressed. First, it may be argued that the inherent imprecision in identifying and estimating the costs of the different services provided by company-operated outlets may reduce the significance of DOE's netback calculations. While such cost allocations are inherently imprecise, in the absence of an objective "market test", this appears to be the best approach to obtaining useful information on this subject.

A second criticism that might be raised is that the DOE approach only applies to "subsidization" and not to an unfair "inflation" of independent dealers' motor fuel costs. However, because the netback calculations employed by DOE would identify any cost disparity, regardless of its origin, this criticism would be inappropriate. Finally, the limited nature of the study, which focussed on only one metropolitan area, must be recognized. However, this deficiency will be cured after the completion of

Part II of DOE's report which will perform similar analyses in four other metropolitan areas.

Thus, after a careful evaluation of the information contained in DOE's report, we see no reason to conclude at this time that refiner-operated stations in fact have any "unfair" cost advantage over their independent rivals. Nor are we aware of any other evidence that would tend to support this conclusion.

Even if such a cost advantage did in fact exist, however, it would only pose a threat to competition at the retail level if the integrated firms possessing that advantage used it in a manner calculated to injure their independent rivals. Any company-operated outlet possessing such an advantage would always have the option -- indeed, the strong incentive -- of pricing its refined products at the level set by competition from independent dealers lacking that cost advantage and pocketing the cost savings resulting from its cost advantage in the form of higher profits on its retail operations.

Since this course of action would permit the integrated firm to earn relatively high profits without disturbing the marketplace or giving the appearance of anticompetitive conduct, it would likely be the preferred use of that cost advantage in most cases. Only where the benefits to the integrated firm of using its cost advantage to injure its independent rivals clearly exceded the benefits of simply pocketing the higher profits resulting from that cost advantage would injury to competition result.

In recognition of this basic fact, DOE reviewed three theories suggested as potential explanations of the purported advantage of using that cost advantage in a manner injurious to independent dealers. Two of these theories, referred to by DOE as "Move-The-Crude" and "Modified Move-the-Crude", relate only to subsidization. Both those theories were rejected by DOE as conceptually flawed. 2/ The "Move-the-Crude" theory does not provide a rational basis for producers to favor their own retail outlets over independent dealers, since crude sales are enhanced regardless who retails the resulting product. The "Modified Move-the-Crude" theory relies, in part, on the oil depletion allowance which Congress eliminated for all but the smallest producers in 1975. Further, neither theory has any relevance to the independent refiners and jobbers which have been the most active in moving to high-volume, low mark-up outlets. Accordingly, the Department agrees with DOE's conclusions in this regard.

The remaining theory, referred to by DOE as "Predatory Practices", could explain either subsidization of company-operated outlets or the artificial inflation of product and non-product costs of independent dealers. According to this

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2/ Office of Competition, Department of Energy, 1 The State of Competition in Gasoline Marketing: The Effects of Refiner Operation at Retail (A Study Required by Title III of the Petroleum Marketing Practices Act) 12 (1980).

theory, integrated firms might engage in such conduct in order to drive those dealers from the market. If successful, this strategy could result in a significiant reduction in competition in the affected market, permitting the integrated firms to increase and sustain their prices above the competitive level.

While this theory could provide an explanation of how an integrated firm would use any such cost advantage for an anticompetitive purpose, it would not likely justify new legislation. First, if an incentive to engage in this conduct does in fact exist, there is no reason why the funds necessary to finance such a predatory endeavor would have to come from a vertically integrated entity. Indeed, the funds needed to defray the expense of such a predatory campaign could easily be drawn from profits earned in totally unrelated endeavors. Consequently, any attempt to prevent such conduct by severing or controlling vertical relations in the petroleum industry, such as the so-called "divorcement" legislation now pending, would not necessarily prevent such misconduct.

Second, and more important, an adequate remedy for such conduct by either integrated or non-integrated firms already exists in the form of the federal antitrust laws. Any attempt to drive independent dealers out of any retail gasoline market in order to damage the competitive nature of that market would constitute a clear antitrust violation. In such situations, the antitrust laws would provide civil and, in cases involving the requisite intent, criminal penalties, as well as compensation for independent dealers in the form of treble damages and, where appropriate, injunctive relief. Moreover, unlike other proposed remedies, such as divorcement, the antitrust laws do not interfere with the proper functioning of market mechanisms where no anticompetitive conduct occurs. Finally, given the existence of antitrust enforcement agencies at the federal and state levels and the availability of treble damage class action lawsuits, I see no reason to believe that any firm engaging in an antitrust violation such as predatory pricing would be able to escape antitrust liability simply because, as some have suggested, it possesses large legal and financial resources.

In addition to analyzing potential sources of anticompetitive conduct by refiner-operated stations, DOE examined two other factors that may have accounted for a large part of the perceived plight of independent dealers: market changes that have tended to make full-service, independent dealers less price competitive than their integrated rivals specializing in high volume gas-only operations, and the distortions that have resulted from seven years of comprehensive regulation of gasoline prices and allocation patterns.

Since the first energy crisis in 1973, there have been a number of significant changes in the patterns of consumer demand for motor fuel and automobile repair services, the two most important elements of the independent service station dealer's business. For example, higher motor fuel prices resulting from higher OPEC crude oil prices have led increasing numbers of motorists to switch to self-service gas-only outlets in order to minimize their fuel costs. Because gas-only stations are generally operated by refiners or jobbers, and because most independent dealers operate more expensive full service outlets, this shift in consumer preferences has placed considerable pressure on independent dealers. Shifts in consumer demand are also the product of two other factors: first, many motorists have abandoned the corner filling station in favor of the automobile dealer service department, primarily in response to the greater complexity of modern automobile engines and stricter manufacturers' warranty requirements. Second, rising real estate values further increase the economies of high-volume gas-only outlets, because operators of such outlets are able to spread these higher costs over more sales than the independent stations. These factors, taken together, may explain a large part of the financial pressure experienced by independent dealers since 1973.

The second major cause of the perceived plight of independent dealers identified in the Title III report are DOE's price and allocation regulations. I will discuss only two of the examples of the burdens imposed on independent dealers by those controls set out in DOE's Title III report. One of the most significant sources of financial pressure on large numbers of dealers arises from the fact that DOE price controls require refiners to set wholesale prices in part on the basis of their average crude oil acquisition costs. Consequently, refiners with access to less expensive crude oil supplies have lower wholesale prices than those refiners forced to rely on high-priced spot market crudes. This effect is particularly pronounced in areas of the country, such as Ohio, where one or more refiners have access to large quantities of Alaska North Slope crude oil which, due to a defect in DOE's entitlements program, is substantially less expensive than all other types of crude. Because DOE's price controls force the outlets favored with low-priced gasoline supplies to pass part of that price advantage on to consumers, outlets with high-priced suppliers will be at a significant disadvantage in the marketplace, and may be forced to reduce their profit margins in order to move their gasoline allocations. This pressure to reduce retail markups could be perceived by independent dealers as resulting from anticompetitive conduct at the refinery level rather than from its actual cause -- DOE regulations.

A second distortion in DOE's price controls arises from the fact that the spread between the prices at which any refiner sells to jobbers and dealers is frozen under DOE's price controls to the level prevailing in 1973. If, as many independent's claim, the price spread between these two groups of purchasers is no longer economically justified, jobbers may receive a real price advantage over independent dealers. If the price controls applicable to the jobbers force those firms to pass part or all of that advantage on to their customers, the result could be to lower gasoline prices at jobber-operated stations relative to independent stations -- another result that could easily be perceived by dealers as subsidization. While there are a number of other regulations that also contribute to the difficulties encountered by independent dealers, time constraints preclude dealing with them in this testimony. This subject is, however, more fully reviewed in Part I of DOE's Title III report.

If, as the Department of Justice believes, shifts in consumer demand and government regulation account for most, if not all, of the perceived plight of independent dealers, legislation aimed at changing the vertical structure of the domestic petroleum industry would do little, if anything, to alleviate these problems. Instead, the appropriate remedy would be to reform or eliminate DOE's gasoline price and allocation controls in order to give independent dealers a chance to compete on an equal footing with all other firms in the market, and to let the resulting action of free-market forces determine the method or methods by which motor fuels are supplied to the consuming public.

On the basis of the foregoing analysis, several conclusions should be evident. The first is that, while Part I of DOE's Title III report does not provide a definitive answer to the question of whether integrated firms have a competitive advantage at the retail level by virtue of their integrated operations, that report does provide a meaningful first step towards answering each of the fundamental questions that must be answered to resolve that issue. The second is that, on the basis of currently available evidence, there is no reason to believe that any such unfair competitive advantage exists. Consequently, legislation aimed at altering the vertical structure of the domestic petroleum industry is premature at best.

## II. The Anticompetitive Effects of Legislation Designed to Alter the Vertical Structure of the Petroleum Industry

While the Department sees no benefits resulting from legislation designed to alter the vertical structure of the petroleum industry at the retail level, we do see a number of serious problems with current legislative proposals to accomplish that goal. A representative example is H.R. 6722, the Small Business Fuel Marketer Preservation Act. If enacted, that bill would change the structure of the petroleum industry in two significant respects. First, major refiners would be prohibited from directly operating any retail gasoline outlets. The total amount of fuel any non-major refiner could sell through its company-operated outlets would be limited to 1978 levels. Such refiners could only increase their direct sales through company-operated outlets above the 1978 level if at least 50 percent of their total increase above that level in each state were made through dealer outlets. Thus, both majors and independents would be forced to expand their dealer networks in order to increase total sales. In the course of my testimony, I will refer to these provisions as "divorcement". Second, this bill would control the price of motor fuels sold to independent wholesalers and retailers. These provisions would limit all differences in the prices of those products to levels justified by differences in the costs of serving different purchasers. In addition, these provisions would control the profits earned by dual distributors at the retail level.

The Department has several objections to legislation of this type. First, because such legislation excludes one class of firms, the major refiners, from gasoline retailing and strictly controls the terms on which a second class of firms, the non-major refiners, may operate in that market, it limits free entry and pricing discretion, that are at the heart of the the competitive process. The result will almost surely be higher prices to consumers.

Perhaps the most serious anticompetitive effect of that legislation arises out of the constraints it would place on non-major refiners seeking to increase their market shares at the expense of the majors. Many non-major refiners have historically relied upon their marketing efficiency to offset somewhat higher refining costs. This legislation would have the effect of depriving any non-major refiner seeking to expand its market share over its 1978 level of most, if not all, of its competitive advantage over its larger rivals by forcing that firm to recruit a substantial dealer network and to establish the administrative structure necessary to manage and supply those dealers. The additional costs inherent in the expansion of an existing dealer network or the establishment of a new network, particularly in a time when consumers increasingly prefer gas-only outlets, could make it difficult, if not impossible, for most non-major refiners to expand beyond their 1978 market shares at either the retail or the refining levels.

Ironically, these constraints would, in all probability, benefit the major refiners. The eight major refiners currently distribute only a small proportion -- roughly 4 to 7 percent -- of their gasoline production through company-operated outlets and are in fact generally committed to distribution systems based on the branded full-service independent dealers. Consequently, this legislation would have relatively little effect on their retailing operations. Instead, it would severely hamper their most important rivals at both the retail and refining levels of the petroleum industry. The likely end result would be increased dominance by the major refiners in the domestic petroleum industry, reduced competition and higher gasoline prices.

Another major defect in H.R. 6722 arises from its price discrimination provisions. As noted above, the price discrimination provisions of that bill can be divided into two groups: those applying to two "arms-length" sales, and those applying where one sale is made at arms-length, while the other is an intracorporate transfer. The price discrimination provisions applicable to two arms-length sales seem superfluous, since such transactions are already covered by the price discrimination provisions of the Robinson-Patman Act. 3/ Moreover, because the provisions of H.R. 6722 do not contain the procompetitive "meeting competition" defense of the Robinson-Patman Act, 4/ those provisions would needlessly restrict competition in the petroleum industry by denying all refiners the ability to reduce their prices to some but not all of their dealers in the face of localized competition. This would needlessly reduce competition in the petroleum industry, and possibly result in higher gasoline prices for consumers.

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3/ 15 U.S.C. § 13a - 13f (1976).

4/ *See* 15 U.S.C. § 13b (1976).

The second set of price discrimination provisions applies when there is an arms-length sale and a transfer of similar fuel from a firm's refining division to its marketing division. While the Robinson-Patman Act is, by its terms, inapplicable to such a situation because there is only "one sale," 5/ the Department cannot support the extension of the concept of price discrimination to this situation. As I noted above in discussing the netback calculations undertaken by DOE in its Title III report, any after-the-fact allocation of costs is inherently difficult. Consequently, any attempt to hold refiners to any set profit level on motor fuel supplies transferred to their affiliated marketing entities is not likely to succeed. Moreover, in the case of H.R. 6722 it is difficult, if not impossible to determine what the profit standard is meant to be. The combined effect of both of these uncertainties may be to cause those firms subject to these sales - basically the non-major refiners - to adopt extremely cautious and conservative pricing patterns in order to minimize their litigation risks. This pricing conservatism would further limit the ability of such firms to compete effectively with the major refiners, a result which could be expected to further extrench the dominant market position of the majors and lead to higher gasoline price levels at the retail level.

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5/ See 15 U.S.C. § 13a (1976).

Our review of H.R. 6722 indicates that such legislation would be anticompetitive. This, together with the absence of any clear evidence that the present vertical structure of the petroleum industry places any unfair burdens on independent dealers, leads us to strongly oppose the adoption of any such legislation at this time.

I would be happy to respond to the questions of the members of the Subcommittee at this time.

## APPENDIX F.—STATEMENT SUBMITTED BY THE NATIONAL SMALL BUSINESS ASSOCIATION

**NATIONAL SMALL BUSINESS ASSOCIATION**
NSB Building • 1604 K Street, N.W.
Washington, D.C. 20006 • Telephone (202) 296-7400

THE VOICE OF SMALL BUSINESS
N S B
FOUNDED 1937

June 6, 1980

The Honorable Berkley W. Bedell
Chairman
Subcommittee on Antitrust &
Restraint of Trade
House Committee on Small Business
B363 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is submitted by the National Small Business Association (NSB) in support of H.R. 5722, the Small Business Motor Fuel Marketer Preservation Act of 1980.

The NSB highly endorses your efforts to bring about better competition in the area of retail service station marketing of petroleum products. As your current hearings and previous investigations have shown, independent service station dealers are in the "no man's land" between unfair competition from large refiners on the one hand and overly burdensome federal regulation on the other.

Your bill, H.R. 6722, will go a long way toward reversing a recent trend of disappearing independents in the industry. While antitrust remedies do exist, it has been found that these remedies are particularly costly "action", and not generally available to the independent service station operation. Therefore, additional action is needed.

While we endorse all the provisions of your bill, we are especially pleased with the section covering open supplies and rack pricing. Your statement of May 20th 1980, referring to extending the Robinson-Patman Act protection to purchasers is a giant step forward.

Unfortunately, we feel that this provision may never prove effective because the current Trucking Deregulation Bill, pending before the House, may well prove to undo the very principle which you are espousing in your bill. Should Section 8 of H.R. 6418 remain in the bill, the discriminatory pricing protection of Section 2A of the Robinson-Patman Act will effectively have been voided.

As you know, many of us are making efforts to have Section 8 deleted. Your support of such a move, if successful, would certainly enhance the principle referred to in your May 20th statement.

Please feel free to include this letter, indicating our support for H.R. 6722, as part of your hearing record.

Sincerely yours,

Jerry Gulan
Jerome R. Gulan
Vice-President
Government Affairs

JRG/hp

## APPENDIX G.—ADDITIONAL MATERIAL SUBMITTED BY THE SMALL BUSINESS ADMINISTRATION

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF CHIEF COUNSEL FOR ADVOCACY

JUN 5 1980

Honorable Berkley Bedell
Chairman
Subcommittee on Antitrust,
 Consumers and Employment
Committee on Small Business
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

There are enclosed two documents which summarize the data I described before your Subcommittee this morning.

The most useful specific table to illustrate the point I was trying to make is on page 23 of the document titled "Fewer Rebels, Fewer Causes: A Profile of Today's College Freshmen."

We will be providing you for the record of your proceedings with a graphic presentation of this data within a few days, along with a revision of the tables from which I spoke.

As always, it was a pleasure to testify for your Subcommittee. If there is any other way in which we can help you in this work, please let us know.

Sincerely,

Milton D Stewart

Milton D. Stewart
Chief Counsel for Advocacy

Enclosures
cc: Honorable Tom Tauke

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# THE FRESHMEN, 1979

BY JERALD G. BACHMAN AND LLOYD D. JOHNSTON

**Last June's high school graduates, a majority of whom are entering college this month, expect things to go better for them than for the country. A survey of 17,000 young men and women shows they place good personal relationships at the top of their life goals.**

The nearly two million young Americans entering college this fall are, by and large, more pessimistic about the state of the nation than any class in recent years. Yet they remain quite optimistic in their personal goals and expectations. At a time when shortages and inflation threaten to become permanent features of the national landscape, nearly all freshmen think they will own at least as much in the way of material possessions as their parents—and half expect to own more. Concerned about energy scarcity, economic problems, and the global balance of military power, 60 percent expect things to get worse for the nation during the next five years. (That figure is fully 20 percent higher than it was in 1978.) Nevertheless, nine out of 10 think their own lives will improve in the next five years.

These expectations illustrate some of the complexities—if not contradictions—that have appeared in a series of nationwide surveys we have been conducting at the University of Michigan's Institute for Social Research. Since 1975, we have been studying the values and attitudes of high school seniors. Nearly 17,000 of them completed our questionnaires this year, about half of them planning on four years of college. The others, to whom we refer as the "noncollege" group, are either planning no further schooling or will attend junior or two-year colleges, or vocational schools.

The questionnaires cover a wide range of personal, social, and political issues, including the students' plans and aspirations, their attitudes toward work and material possessions, their perspectives on national problems, and their views about politics and "the system." All together, the information gives us a profile of this year's college freshmen: the class of 1983.

Compared with students in the late 1960s, today's freshmen are quieter, less conspicuous in dress and behavior, and less given to excesses in their political views and actions. Why? In the 60s, students could see white police brutalizing black demonstrators, they could hear of atrocities committed in Vietnam, and many of them, faced with the prospect of the draft, had to decide whether to serve unwillingly or flee to Canada. It was easy to get angry, and the targets were clear. Today's problems are a great deal more complex than those occupying center stage a decade ago. The answers are less clear, there is less of a sense of who the villains and heroes are, and it's just a lot harder to build up a healthy sense of moral outrage.

As we approach the 1980s, there are fewer causes and fewer rebels, and today's students thus feel freer to concentrate on the more immediate issues in their personal lives—their own hopes and plans. And in large measure, those hopes and plans fit pretty well the conventional view of the "American dream" of marriage, family, a good job, an attractive home, and a wide range of material possessions.

Does all this mean that these students should be characterized as conventional? We think not. They show considerable tolerance for unconventional behavior, such as nonmarital cohabitation and the still illegal use of marijuana. Their views on racial and sexual equality are more liberal than those of their elders. And some of their views about our social institutions show considerable dissatisfaction with the status quo.

Our research suggests that no single label—conservative or liberal, conventional or radical, "turned off" or "turned on"—fits today's college freshmen. They are reaching adulthood during a period of great complexity and conflict regarding social issues, and it is not surprising that we find a similar complexity and conflict reflected both in their views about these issues and about their own lives.

## Life Goals

In our survey, we asked students to rate the importance of a list of major life goals, choosing from "Extremely important," "Quite important," "Somewhat important," or "Not important." Focusing on the "Extremely important" ratings (see table on page 80) gives us a pretty good sense of their priorities, and clearly shows that

# Research suggests no single label—conventional or radical, "turned off" or "turned on"—fits today's college freshmen.

"Having a good marriage and family life" ranks ahead of all other goals. Nearly four out of five college freshmen rate it extremely important. (Studies of adults suggest a certain wisdom to this choice, since satisfaction with marriage and family consistently have proved central to overall life satisfaction.) Over two-thirds of the freshmen give the extremely important rating to "Having strong friendships," making it the second choice on the list. About two-thirds consider "Finding steady work" and being successful at it extremely important, but, surprisingly, only 16 percent feel that making a lot of money is important.

Only one in four freshmen consider "Making a contribution to society" extremely important to their lives, and only 10 percent gave that rating to "Being a leader in my community." But if their responses suggest they are low in idealism and ambition, the goals expressed in those two items may appear rather distant and unattainable to many 18-year-olds. The most sweeping goal in our list is "Finding purpose and meaning in my life." This is one of those intangibles that college experience is supposed to provide, and two-thirds of the freshmen rate it as extremely important. Interestingly, on this and many other life goal ratings, the responses of the noncollege group are quite similar to their collegiate peers. However, the noncollege-bound students are less likely to give extremely important ratings to being successful in their work, being a leader in the community, and making a contribution to society.

## Attitudes Toward Work

"If you were to get enough money to live as comfortably as you'd like for the rest of your life, would you want to work?" This question is an old standby in survey research, serving as a simple measure of the intrinsic value people place on work. Consistent with the high importance they assign to work as a life goal, more than four out of five freshmen replied yes to this question—a higher proportion than in a recent survey of the adult work force. Three-fourths of both the college and noncollege groups agree or mostly agree with the statement, "I expect work to be a very central part of my life." Only about 15 percent of college freshmen agree with the statement, "To me, work is nothing more than making a living" (compared with almost twice as many of their noncollege peers.) While the work ethic is far from dead among this generation, it does have limits. For example, half the college freshmen and two-thirds of the noncollege group say they would like a type of work they could forget after the workday is over.

### THE IMPORTANT THINGS IN LIFE

**What college freshmen rate "extremely important":**

| | College | Noncollege |
|---|---|---|
| A good marriage and family life | 79% | 76% |
| Strong friendships | 69% | 57% |
| Finding purpose and meaning in my life | 66% | 62% |
| Finding steady work | 66% | 67% |
| Being successful in my work | 63% | 62% |
| Making a contribution to society | 23% | 10% |
| Having lots of money | 16% | 19% |
| Being a leader in my community | 10% | 4% |

We asked a number of questions about what people look for in their work, and the table on page 82 indicates how many in each group rate each characteristic as being "Very important." (The other possible ratings are "Pretty important," "Somewhat important," and "Not important.") The freshmen give highest ratings to jobs that are interesting and that make use of a person's skills. About 60 to 65 percent consider it very important to have a job in which they can see the results of what they do, with good chances for advancement and a secure future. Less than half consider it very important that a job be worthwhile to society, or that it give them a chance to earn a good deal of money, and only one in four gives the top rating to jobs that have high status and prestige.

The college and noncollege groups do not differ substantially on their responses to the qualities of jobs. However, while 60 percent of the noncollege group feel a chance to earn a good deal of money is very important in a job, only 47 percent of the college freshmen do. Perhaps many freshmen assume their chosen fields will provide a good deal of money and prestige, and they can thus afford the luxury of not stressing the importance of such things. However, since 1975, there has been some increase in the degree of importance that both groups attach to such job qualities as money, prestige, and chance for advancement.

The high aspirations of the college freshmen are strikingly clear when we consider the occupations they expect to attain by the time they are 30. Nearly two-thirds expect to be professionals, and about 20 percent hope to enter fields such as medicine or law, which require a doctoral degree or the equivalent. Given these occupational aspirations, we would expect many freshmen to be looking toward graduate or professional school after college, and, indeed, just over half of them are. By contrast, the most frequent occupational choices of the noncollege group are clerical or office work for the females, and skilled or semiskilled blue-collar work for the males.

**Half the college freshmen surveyed say they would like a job they could forget after the workday is over.**

A different perspective on job preferences is provided by the answers to a set of questions in which we asked for ratings of nine different types of organizational settings as possible places to work (see table, page 84). The rating scale ranges from "Not at all acceptable" and "Somewhat acceptable" to "Acceptable" and "Desirable." The preferred work settings are those that provide the greatest independence and the least external control. Thus, being self-employed heads the list of desirable settings for both college and noncollege groups. The work setting judged least acceptable by both groups is military service, followed fairly closely by police agencies. (This does not mean that these young people are antimilitary or antipolice; it simply means that very few of them would care to work in such organizations themselves.)

The proportions of both groups viewing large corporations as desirable work settings have been increasing steadily over the past three years. In 1976, only 14 percent of freshmen rated corporate employment as desirable, compared with 23 percent in 1979. More important, the proportion rejecting large corporations as "not at all acceptable" has declined steadily to a point at which very few would rule out working for one.

## Money and Materialism

During their senior year in high school, a surprisingly large number of college-bound students—about three-quarters—held paying jobs, working an average of 16 to 20 hours a week. Not all freshmen were equally likely to have held a job during their senior year. More males than females worked, and they tended to work longer hours and to earn more money. Racial differences were substantial: compared with whites, blacks were more than twice as likely to have no job late in their senior year, and those who were employed tended to work fewer hours than the whites did.

More than one-quarter of the students earned more than $200 a month last spring, and another quarter earned more than $100 a month. The noncollege-bound seniors tended to work more hours and made more money. These figures confirm what many merchandisers have observed and turned to their advantage: teenagers today have a good deal of money at their disposal, much of it available for what economists call "discretionary spending."

### FUTURE JOB SATISFACTION

What students in the survey rate "very important" in a job:

| | College | Noncollege |
|---|---|---|
| Interesting to do | 89% | 67% |
| Uses skills and abilities | 74% | 78% |
| Good chances for advancement | 64% | 69% |
| Predictable, secure future | 63% | 68% |
| See results of what you do | 61% | 59% |
| Chance to make friends | 57% | 55% |
| Worthwhile to society | 48% | 40% |
| Chance to earn a good deal of money | 47% | 69% |
| A job most people look up to, respect | 37% | 35% |
| High status, prestige | 28% | 30% |

Given such buying power, it is not surprising that the results of our survey reveal a strong consumer orientation during the high school years, and suggest that this pattern is likely to continue for both the college and noncollege groups. Three-quarters of the females and about half as many of the males say they "very much enjoy shopping for things like clothes, records, sporting goods, and books." Most of the rest say they like such activities "pretty much." About 80 percent of the females and 70 percent of the males care very much or pretty much about "having the latest fashion in clothes, records, leisure activities and so on."

While material possessions are important to them, most of the freshmen reject the idea of keeping up with the Joneses. Three-quarters claim to care little or not at all about whether their family has most of the things their friends and neighbors have.

A clear majority agree or mostly agree with the statement, "My family and I often buy things we really don't need; we could get along with much less." When asked for the smallest amount they could be content to own in the future, the great majority say they could be content to own only as much as their parents. In fact, almost half say they could be content to own less. Still, more than half expect they will, in fact, own more; and very few expect to own less.

What kinds of things do they want to own? A majority appear committed to the "American dream." They want to own their own home (not an apartment or condominium) with a big yard, well-kept lawn, appliances, stereo, and the like. About half think it is quite or extremely important to have "clothes in the latest style." And nearly all want to own a car—though not necessarily a large or a late-model one.

## Marriage and Family

When it comes to marriage and parenthood, today's high school graduates do not exhibit any radical break with the past. By the end of their senior year in high school, only 1 percent of this year's freshman class reported they were already married, while about 3 percent said they were engaged. Their noncollege peers were about three times as likely to be married or en-

**Most students say they could be content to own only as much as their parents, but many expect to own more.**

gaged. In the long run, however, the great majority of both groups expect to marry. Though most have not given much thought to the subject, almost all (96 percent) say they would like to have children, and the most popular choice is two. The majority of both groups consider it "very likely" that they will stay married to the same person for life, and most of the rest consider it "fairly likely."

Although the large majority of women entering college want children, only about 4 percent expect to be full-time homemakers at age 30. (The proportion is higher among the noncollege women, but it has been falling steadily—from 22 percent in 1976 to only 13 percent in 1979.) The fact that so many in both groups reject a long-term role of full-time homemaker almost certainly reflects the impact of the women's movement.

When preschool children are involved, preferences shift dramatically. Two-thirds or more of both college and noncollege groups rate it unacceptable to have the wife working full-time under such conditions. The most desirable arrangement for both groups—particularly the college group—is for the wife to be a full-time homemaker for as long as her children are young.

The differences between the sexes in their responses to these questions are surprisingly small. Although the young women in this freshman class certainly do have long-term career aspirations, they are not abandoning in massive numbers the traditional pattern of managing the home full-time when the children are small.

The majority of high school seniors, whether college-bound or not, are fairly tolerant of the idea of a man and a woman living together without being married. But they are a great deal less tolerant of "a man and a woman who decide to have and raise a child out of wedlock." We interpret these responses as indicating a willingness to let people "do their own thing" as long as others (like children) do not suffer.

## Drug Abuse

It may not be surprising that a number of students worry about drug abuse, given the degree to which they are exposed to it in their peer group. By the end of their senior year in high school, more than a third of the students have illicitly used at least one drug other than marijuana at some time. The percentage using marijuana has risen substantially during the 1970s. Nearly all students have at least some friends who use it, six in 10 have tried it themselves, a third have used it 20 or more times, and one in nine or 10 high school seniors uses it daily or nearly daily. (In fact, a substantial rise in daily use over the last few years is of considerable concern to policymakers and health experts.) By way of contrast, the proportion reporting daily drinking has remained rather steady over the last five senior classes, at around 6 percent.

### THE BEST PLACE TO WORK

**The percentages of students who rate various work settings "desirable" or "unacceptable":**

| | College | Noncollege |
|---|---|---|
| **Being self-employed** | | |
| Desirable | 48% | 47% |
| Not Acceptable | 9% | 10% |
| **A small business** | | |
| Desirable | 21% | 22% |
| Not Acceptable | 4% | 4% |
| **A school or university** | | |
| Desirable | 21% | 6% |
| Not Acceptable | 10% | 24% |
| **A social-service organization** | | |
| Desirable | 10% | 10% |
| Not Acceptable | 17% | 22% |
| **A large corporation** | | |
| Desirable | 22% | 10% |
| Not Acceptable | 6% | 6% |
| **A government agency** | | |
| Desirable | 10% | 14% |
| Not Acceptable | 10% | 20% |
| **A police department** | | |
| Desirable | 11% | 10% |
| Not Acceptable | 28% | 31% |
| **The military service** | | |
| Desirable | 6% | 6% |
| Not Acceptable | 60% | 45% |

Despite the growing numbers using marijuana, the proportion who go on to the more serious drugs has been quite stable over the last four years. Certain drugs, such as cocaine, have been rising in popularity while others, such as hallucinogens and sedatives, have been declining. But the overall proportion involved in the use of any illicit drug other than marijuana has remained quite steady.

There are substantial differences in drug usage between college-bound and noncollege students. Daily use of marijuana, for example, is nearly twice as high among the noncollege-bound as among their peers, and frequent use of most of the other illicit drugs also tends to be disproportionately concentrated in this group. (Frequent alcohol use and, in particular, regular cigarette smoking are much more common in the noncollege segment, too.)

It may come as a surprise that, while illicit drug use is more common in this generation than in any preceding one, the majority of today's youth still hold quite conservative views on the subject. Over three-fourths of the seniors disapprove of someone even experimenting with the more serious illicit drugs, and most strongly disapprove. The majority believe that users of all such drugs run a substantial risk of harming themselves or others. And even in the case of marijuana, two-thirds of all seniors still view regular use as potentially harmful, and disap-

## Three out of five freshmen think that things will get worse for the country during the next five years.

prove of it, despite the fact that an increasing minority use it regularly.

### Environment and Energy

Today's freshmen express considerable concern over the deterioration of the environment and the use of scarce resources. The overwhelming majority agree with the statement "Pollution has increased in the U.S. in the last 10 years," and most feel that the government and the media have not exaggerated its dangers. About 60 percent of all freshmen reject the assertion that "America needs growth to survive, and that is going to require some increase in pollution." Despite their own expectation of material possessions, three-quarters either agree or mostly agree "People will have to change their buying habits and way of life to correct our environmental problems." They also strongly support banning products that might harm the environment, and they favor "pollution taxes" to encourage less environmentally damaging ways of producing products. The college-bound are somewhat higher than their classmates in their level of environmental concern and in their willingness to sacrifice to help deal with problems.

As for energy consumption, freshmen reports about efforts at home to reduce heat and electricity have shown virtually no change since 1977. Cars, however, remain an exceedingly important part of the lifestyle of high school and college students. When they were seniors in high school, about 40 percent of the college-bound owned cars, as did half of the noncollege group. Most of the rest in both groups had access to a car.

Consistently over several recent years, roughly half of the seniors (both college and noncollege groups) reported making some or quite a bit of effort to cut down on driving in order to save gasoline. Our survey of the high school class of 1979 was conducted last spring in the midst of considerable attention to gasoline shortages; nevertheless, responses differed only slightly from those in 1978. More than 40 percent of the seniors with drivers' licenses said they had made little effort or none at all to cut down on driving.

### OPINIONS OF THE ESTABLISHMENT

**What college freshmen think about the nation's institutions:**

|  | [illegible] | Are doing a good job | Should have more influence | Should have less influence |
|---|---|---|---|---|
| Large corporations | 41% | 55% | 6% | 58% |
| Major labor unions | 41% | 37% | 17% | 46% |
| Congress | 38% | 26% | 28% | 17% |
| President and administration | 37% | 33% | 30% | 16% |
| National news media | 30% | 61% | 10% | 33% |
| Police and law-enforcement agencies | 31% | 40% | 63% | 11% |
| Courts and justice system | 34% | 35% | 28% | 9% |
| Public schools | 33% | 41% | — | — |
| U.S. Military | 31% | 44% | 33% | 13% |
| Colleges and universities | 35% | 62% | — | — |
| Churches | 18% | 66% | 44% | 12% |

### Politics and Institutions

In most national surveys, the question arises as to whether Americans have much confidence in the nation and its system of government. Apparently, many of today's college freshmen do. About two-thirds agree or mostly agree with the statement, "Despite its many faults, our system of doing things is still the best in the world." But what about some of the institutions that make up the system? We listed a dozen of them, and asked students to rate them in terms of the honesty and morality of their leaders, how good a job they are doing for the country, and whether they should have more or less influence than they do now (see table at left).

Perhaps the most important thing to note is that the relationships among the different responses are fairly complex: these young people do not see the world simply in terms of "good guys" and "bad guys." The President, his administration, and Congress get mixed reviews, scoring low on the job they are doing for the country. Many students have doubts about their honesty and morality. But a fair number still think both the President and Congress should have more influence than they do now, perhaps on the assumption that having more influence would help them do a better job of running the country.

Today's freshmen seem most alienated from big business and big labor. The students think that large corporations are doing a good job for the country, but rate them low on honesty and morality. Labor unions get much the same report card, except that fewer rate them as doing a good job for the country. More than half feel that large corporations should have less influence in our society, and nearly half feel the same way about major unions.

Freshmen in recent years have been showing a strong concern for law and order. A large proportion say they worry a lot about crime and violence as a national problem. The institutions they choose most often as deserving more influence are the police and law-enforcement agencies, even though such organizations receive only average ratings on morality or how good a job they are doing for the country.

## Outlook on the Future

Since 1976, each class has been more pessimistic about the nation's future than the one preceding, but the shifts were rather small until this year's 20 percent jump. Now, three out of five freshmen think that things will get somewhat worse or much worse for the country during the next five years, and only one in five expects things to get better. Their outlook is just about equally glum for the rest of the world.

What are some of the specific problems they are worrying about? The national issue of greatest concern to recent high school classes has been crime and violence, with roughly half saying they often worry about them. This year, however, concern about energy has reached a comparable level. Drug abuse, pollution, and economic problems rank next among student concerns. The weighty issues of possible nuclear conflict, race relations, hunger and poverty, and population growth trouble seniors less often. But they do worry more than their recent predecessors about the possibility of nuclear war, perhaps in part because of the public discussions prompted by SALT II, and anxiety about the economy is also beginning to rise.

Despite their gloomy outlook on national and world conditions, today's college freshmen and their former high school classmates see their personal futures in mostly positive terms, judging by their plans and expectations regarding marriage, family, work, and material goods. When asked to think about how their lives will go in the next five years, about nine out of 10 say they expect circumstances to get much better or at least somewhat better. Most of the rest think things will stay about the same, and only a handful feel they will get worse.

Is this high degree of personal optimism really so far-fetched? Perhaps not. It may actually be fairly realistic for most high school seniors to expect their own lives to improve during the next five years. Leaving high school and the parental home, and in many cases also finishing college, will mean greater freedom and privilege—and they expect these gains to outweigh the accompanying burdens.

But are freshmen's material aspirations unrealistic given the economic situation they are likely to face? Perhaps, in part. It may prove rather difficult for freshmen to moderate their expectations during the next few years, though many may have to. During high school, many were experiencing what might be termed premature affluence. The great majority were employed, and most were making fairly good money. Although many saved for college, a good number also spent a lot of their income for discretionary purchases—cars, records, stereos, and attractive wardrobes—rather than for rent or groceries. Up to this point in their lives, today's youth have enjoyed much more puchasing power than their parents did at a similar age, so it is perhaps understandable that many of them expect that the pattern will continue.

Of course, it cannot continue—at least not on the level that some experienced during high school. Five years from now, today's freshmen will find that necessities such as food and housing will cut down the proportion—and in many cases the actual number—of dollars available for discretionary spending.

But if the students' material expectations are somewhat unrealistic, their disappointments in future years may be cushioned by attaining the goals they rate more important than "having lots of money": marriage, parenthood, friendships, and meaningful work.

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# FEWER REBELS, FEWER CAUSES:
# A PROFILE OF TODAY'S COLLEGE FRESHMEN[1]

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Ann Arbor, Michigan
1979

Throughout the nation the members of the class of 1983 are about to begin their years of college study. What is this incoming class of freshmen like? And how does it compare with earlier classes?

Compared to their predecessors in the late 1960s, today's students are quieter, less conspicuous in dress and behavior, and less given to excesses in their political views and actions. No question about it, young people these days are less flamboyant than those of a decade earlier. But to be more accurate about it, we should say that the flamboyant minority of a decade ago does not have much of a counterpart today.

Why is there less student activism these days? The answer is both obvious and important: Today's problems are a great deal more complex than those which occupied center stage a decade ago—the answers are less clear, there is less of a sense of who are the villains and the heroes, and it's just a lot harder to build up a healthy sense of moral outrage. In the sixties students could see white police brutalizing black demonstrators; they could see atrocities committed daily in Vietnam; and many of them faced with the prospect of the military draft had to decide whether to serve unwillingly or flee to Canada. It was easy to get angry and the targets were clear.

Now, in the late 1970s, there are fewer causes and fewer rebels. Not many people would claim that racial and sexual equality have arrived, but few would deny that real efforts have been made in those directions. Environmental problems certainly have not been resolved, but now there seems more of a national commitment to deal with these problems. (And the efforts made thus far have helped people to realize the enormous complexities and difficulties involved in solving them.) Most important, the nation is not currently involved in any Vietnam-like situation; and, for the present at least, there is no draft.

Lacking such dramatic external crises, students these days are freer to concentrate on the more immediate issues in their personal lives—their own hopes and plans. And in large measure, those hopes and plans fit pretty well the conventional view of the "American dream" of marriage, children, a good and secure job, an attractive home, and a wide range of other material advantages.

Does all this mean that students in the current generation should be characterized as "conventional"? We think not. Although a number of their values might be described as "conventional"—or, for that matter, "traditional" or "conservative"—there are other views and values which do not fit. Students today show a considerable tolerance for alternative lifestyles (e. g. , cohabitation outside of marriage). Many of them use marijuana although it remains illegal. Their views on racial issues and sexual equality are probably more flexible and liberal than those of older Americans. And some of their views about our major institutions are hardly what most people would label as conservative or as accepting of the status quo.

It thus seems clear that no single label—conservative or liberal, conventional or radical, turned off or turned on—is likely to fit today's freshmen. They are reaching adulthood during a period of great complexity in social issues, and great awareness of that complexity. It is not surprising, therefore, that we find a similar complexity in their views about many of these issues.

All too often our observations about youth are based on what Joseph Adelson has described as "atypical fractions"—the delinquent, the disturbed, or the ideologically volatile (Psychology Today, February, 1979). A series of surveys we have been conducting at the University of Michigan's Institute for Social Research is intended to improve this situation. We have been gathering information which characterizes broad and representative cross-sections of young men and women throughout the United States.

Several months ago we completed a survey of this year's entering freshman class as they were finishing their senior year of high school. This was the fifth in an annual series of such surveys, started in 1975 under the title "Monitoring the Future—A Continuing Study of the Lifestyles and Values of Youth." For a detailed description of the study design and purposes, see Bachman and Johnston (1978); considerable information is also provided by Johnston, Bachman, and O'Malley (1979).

In 1979 nearly 17,000 seniors—college-bound and noncollege-bound alike—completed questionnaires which covered a wide range of issues of both personal and social significance. Because of the breadth of the subjects covered, the material in our survey is divided into five different questionnaire forms; about 3,300 seniors responded to each form. Questions were included about social and political participation, attitudes about appropriate roles for women and men, attitudes toward other races, views on energy and the environment, drug use, personal plans, and so on.

At the request of the editors of Psychology Today, we have used the very early results of that survey as the basis for a profile of this fall's freshman class.[2] We will look at their personal plans and aspirations, their perspectives on national problems, and their views about politics and "the system." (We have also looked at comparable data for the previous four classes, in order to check for recent shifts and trends. Wherever substantial shifts have occurred, they are noted.) Before presenting the profile of this year's class, let us define the groups we will be describing.

The college-bound group consists of those twelfth graders who, just a few months before high school graduation, stated that they "probably" or "definitely" would complete a four-year college program. There is, of course, some slippage between such plans and actual attainments, and only about half of those planning to complete four years of college can be expected to do so. However, the great majority are entering college this fall as freshmen. Our high school sample also provides an important comparison group—those high school seniors who did not expect to complete four years of college. (While some of them will obtain post-high school training in vocational programs and/or two-year college programs, evidence from other research indicates that very few of them will become college graduates. As a matter of convenience, we will often use the term "noncollege group" to refer to those not expecting to complete four years of college.)

## Personal Plans and Aspirations

Developing successful personal relationships, particularly a good marriage and family life, rank at the top of freshman goals in life. One of our survey questions presented a list of major life goals, and asked: "How important is each of the following to you in your life—not important, somewhat important, quite important, extremely important?" Responses are summarized in Table 1. Four out of five of the college-bound seniors rated "having a good marriage and family life at the top of the scale. Two-thirds did the same for "having strong friendships." Studies of adults of all ages suggest that these are wise priorities, since satisfaction with marriage and family have rather consistently proven to be central determinants of overall life satisfaction.

Another central factor in life satisfaction is work. Nearly two-thirds of the college-bound rate it extremely important to find steady work, and be successful in that line of work. But in spite of their stress on job success, only one in six considers it extremely important to "have lots of money." (Another one-third rate it quite important.)

At least one question in the series might be taken as an indicator of idealism or altruism. About 23 percent of the college-bound consider it extremely important in life that they "make a contribution to society," and another 37 percent rate it quite important. While these percentages are lower than most others on the list, it should be remembered that this broadly stated goal may appear rather distant and unattainable to many individuals. The same may be true of "becoming a leader in my community," which only one in ten rates as extremely important. As we will see later, the answers to other questions suggest that a considerably larger proportion hope that their work will involve something worthwhile to society.

The most sweeping goal in our list is "finding purpose and meaning in my life." This is one of those intangibles which the college experience is supposed to help provide, and two-thirds of the college-bound rate it extremely important. But the quest for purpose and meaning is by no means limited to the college-bound; their high school classmates rate it important in nearly equal proportions. In fact, the ratings provided by those not planning to complete college closely parallel the ratings described above, except that somewhat fewer of the noncollege group give top ratings to being successful in their line of work, making a contribution to society, and being a community leader. Overall, however, the priorities of the two groups are really quite similar.

Given that students assign such great importance to a good marriage, family life, and work, we will take a more detailed look at their plans and aspirations in each of these areas.

Marriage and Parenthood. By the end of their senior year in high school, just over one percent of this year's freshman class reported that they were already married, while about three percent said they were engaged. Their high school classmates not expecting to complete college were about three times as likely to be married or engaged /1-5C6/. In the long run, the great majority of both groups (about four out of five) expect to marry and have children /2A6, 2A7/. Most freshmen consider the ideal time for marriage to be sometime after they finish college, whereas their noncollege peers tend to prefer marriage a year or two earlier /3A19/.

The majority of both groups consider it "very likely" they will stay married to the same person for life, and most of the rest think it "fairly likely" that they will /2A7/. (Perhaps those in the latter group are somewhat more realistic, given recent statistics on divorce rates.)

The college-bound are not much different from their high school classmates in terms of their thoughts about having children. Neither group has yet given much attention to the subject, since about half say they have thought about it only a little, while another ten percent say they haven't thought about it at all /3A20/. There is a very large difference between the sexes, however, with young women twice as likely to have thought a lot about whether to have children and how many they would prefer. The most popular number of children is two; but nearly half of those expressing a preference would choose three or more children. (Only four percent prefer none.)

While there are few differences between males and females in preferred number of children, there is a distinct tendency for the women to prefer a longer interval after marriage before having their first child /3A23/. This probably reflects their greater concern with the impact that childbearing will have on their careers. Although the great majority of women planning to complete college want children, only about four percent expect to be full-time homemakers at age 30. The proportion is higher among the noncollege women, but it has been falling steadily—from 22 percent in 1976 to only 13 percent in 1979 /4A9/.

The fact that the great majority in both groups reject a long-term role of full-time homemaker almost certainly reflects the massive impact of the women's movement. Given their interests in both children and career, the problem for these women will be to find an appropriate balance between the sometimes conflicting demands of their family and their work.

Our survey includes a series of questions designed to get at some aspects of this problem.[4] Each student is asked to "imagine different kinds of married life that you might have." The questions cover preferences for husband and wife working full-time, less than full-time, or not at all; and the questions also distinguish between a couple with no children and a couple with one or more pre-school children. For a couple with no children, the most preferred arrangements involve the wife working either full-time or part-time; however, many would find it acceptable if the wife did not work outside the home. The college-bound group is above average in its tendency toward having both partners working full-time /2A8/.

When one or more pre-school children are added to the equation, preferences shift dramatically. Two-thirds or more of both college and noncollege groups then rate it "unacceptable" to have the wife working full-time. The most desirable arrangement for both groups—and particularly the college-bound group—is to have the wife be a full-time homemaker when young children are present /2A9/. This does not mean that the father should have limited responsibilities for child care. To the contrary, the arrangement most frequently rated as desirable—particularly by the college-bound group—is to have both parents share equally in caring for the child(ren) /2A10/. (This seems a bit impractical if the father has a full-time job outside the home. We suspect that this is better interpreted as a goal—a desire to have the father play as important a childrearing role as possible within the confines of the traditional "breadwinner" position.)

There are, of course, differences between the sexes in their responses to these questions. The females are somewhat more likely to favor the wife working full-time when no children are present, or working at least part-time when there are small children. Perhaps the most interesting thing about these male-female differences is not that they occur, but that they are really not very strong. Although the young women in this freshman class certainly do have long-term career aspirations, they are not massively abandoning the "traditional" pattern of the wife managing the home full-time while her children are small. It seems clear, both from these data and from other questions in the survey, that these young adults—both male and female, college and noncollege—are strongly committed to the principle of giving time and attention to their children.

Another place where traditional conceptions have not changed concerns the husband working less than full-time. Any such arrangement is still viewed as unacceptable by most of this generation, both male and female, college and noncollege. This means, of course, that the male sex role is much more narrowly circumscribed than the female one, at least when it comes to majority views about any lifestyle involving less than full-time work. (It should be noted, however, that the college-bound group is a bit more tolerant than the others when it comes to the husband working part-time while the wife works full-time.)

In sum, when it comes to marriage and parenthood, today's high school graduates and college entrants do not exhibit any radical break with the past, judging by their own plans and preferences. In large proportions they prefer marriage, they want children, and they seem willing to make accommodations to the needs of those children. Still, there certainly have been some important shifts in the attitudes of American youth concerning this realm of behavior (and they still seem to be changing, but rather slowly during the later 1970s). The idea of wives working full-time, particularly when there are no preschool children, is now widely accepted by males as well as females. Along another dimension, the majority of high school seniors, whether college-bound or not, are fairly tolerant in their views toward "a man and woman living together without being married" /5D2/. On the other hand, they are a great deal less tolerant of "a man and woman who decide to have and raise a child out of wedlock" /5D3/. We interpret these responses as indicating a willingness to let people "do their own thing" so long as others—such as children—are not adversely affected.

Work and the Workplace. "If you were to get enough money to live as comfortably as you'd like for the rest of your life, would you want to work?" This question is an old standby in survey research as a simple measure of the intrinsic value people place on work. Consistent with the high importance they assigned to work as a life goal, more than four in every five of those planning to complete college say they would want to work—a higher proportion than in a recent survey of the adult work force (Quinn & Staines, 1979). And only slightly fewer of their noncollege classmates gave the same answer. On still a third question about work, three-fourths of both the college and noncollege groups agree (or mostly agree) with the statement "I expect work to be a very central part of my life" /3A5c/. Looked at from the other side, only about 15 percent of the college-bound (and about 28 percent of their noncollege peers) agree with the statement "To me, work is nothing more than making a living" /3A5b/. Obviously, the work ethic is far from dead in this generation.

There are, nevertheless, limits to the commitment to work. For example, half of the college group and two-thirds of the noncollege-bound say they would like a type of work they could forget after the workday is over /3A5a/. We suspect that the importance placed on family life and other interpersonal relationships by this generation of young adults goes a long way toward explaining their desire to place limits on their commitment to work.

We asked a number of questions about things that people look for in their work. Table 2 shows various job characteristics included in the list, and indicates how many in each group (college and noncollege) rated each characteristic as being "very important" to them. Highest ratings go to jobs that are interesting and make use of a person's skills. And over 60 percent think it is very important to have a job where they can see the results of what they do, where there are good chances for advancement and promotion, and where the future is reasonably predictable and secure. More than half also rate it very important that the job provide a chance to make friends. Prestige seems to come out last as a dimension of importance in its own right, although this may occur because students feel uncomfortable about appearing to be status conscious. Only about one in four assign a rating of very important to "a job that has high status and prestige," but half again as many give a comparable rating to "a job that most people look up to and respect."

The dimensions described above do not show large differences between the college and noncollege groups. But there are some differences of opinion regarding two other possible job characteristics. About 48 percent of the college-bound group consider it very important to have "a job that is worthwhile to society," compared with 40 percent for the noncollege group. Conversely, 60 percent of the noncollege group considers it very important to have a job which provides "a chance to earn a good deal of money," while 47 percent of the college-bound rate that as important.

Several of these dimensions of job importance have been changing over the last several years. In particular, there has been a slight rise in importance attached to advancement, money, and prestige. The high aspirations of the college-bound,and the substantial differences between them and their noncollege high school classmates, are strikingly clear when we consider what sorts of occupations they expect to attain by the time they are thirty. Sixty-four percent of this year's freshmen expect to be professionals, and almost a third of this group (twenty percent of all freshmen) expect to enter professions requiring a doctoral degree or a roughly equivalent amount of education (professions such as medicine, law, dentistry, etc.) /4A9/. Given these occupational aspirations, we would expect many freshmen to be looking toward graduate or professional school after college. In fact, just over half of them do, although most of these say it is "probable" rather than "definite" /1-5C21e/.

By way of contrast, only a small proportion of the noncollege-bound (fewer than one in six) expect to enter any of the professions. The more frequently chosen occupations for this group are clerical or office work for many of the females, and skilled or semi-skilled (blue collar) work for many of the males /4A9/.

A different perspective on job preferences is provided by a set of questions which ask for ratings of nine different types of organizational settings as possible places to work. The rating scale ranges from "not at all acceptable" to "desirable" (with "somewhat acceptable" and "acceptable" as middle points on the scale). Table 3 lists the nine settings and shows the proportions of the college and noncollege groups rating each as "desirable" and as "unacceptable." Clearly, the most preferred work settings are those which provide the greatest independence and involve the least external control. Thus, being self-employed heads the list, followed by working in a small business, or with a small group of partners. Equally clearly, the work setting preferred by the smallest numbers and rejected by the most is military service, followed by police agencies. (This does not, incidentally, mean that young people are anti-military or anti-police; it simply means that very few of them would care to work in that kind of organization.) In the middle ranges of acceptability as work settings are schools, social service agencies, government agencies, and large corporations—all of which tend to be somewhat impersonal bureaucracies, though less regimented than the military or police.

Several of the organizational settings show sharp differences in their acceptability to the college group versus the noncollege group. The largest difference, and perhaps the most predictable one, involves "working in a school or university"—a prospect which is rejected by a large proportion of the noncollege group. The noncollege group also shows much lower interest in the idea of "working in a government agency." In fact, across most of the job settings included in the list the noncollege group appears a bit more "selective" than the freshmen in their ratings of desirability and unacceptability. Only military service clearly attracts more of the noncollege than the college group, and that occurs simply because very few freshmen these days rate the military as an attractive work setting. (It is also the case that very few expect to serve.)

The attractiveness ratings for military service have been declining steadily since we first asked these questions of high school seniors in the class of 1975. At first blush that would seem to be very bad news for the all-volunteer force. But it turns out that attractiveness ratings for some other organizational settings have been declining also. It would seem that freshmen, as well as the rest of their high school classmates, have grown more selective about the settings in which they would prefer to work.

The one very interesting exception to this tendency toward greater selectivity involves "working in a large corporation." The proportions of both groups who rate this as desirable have been increasing over the past few years. (Only 14% of the college-bound in 1975 and in 1976 rated it desirable, compared with 23% in 1979.) Perhaps more significant is the fact that the proportions rejecting large corporations as "not at all acceptable" have declined steadily to a point where very few would rule out that sort of a work setting. If some have reservations about the power and influence of large corporations (and, we'll see later, a majority do), that doesn't mean that they rule out the possibility of working for them.

*Money and Materialism* About eighty percent of the college-bound held a paying job near the end of their senior year in high school, working an average of 16-20 hours a week /1-5C23/. The proportion working, and also the proportion working more than twenty hours a week, has been going up about two percent each year for the last few years. Earnings have also been rising, due mostly to inflation. Last spring about thirty percent earned more than $200 a month, another thirty percent earned at least $100 a month, another sixteen percent earned less than that, and the remaining 24 percent did not hold a job /1-5C24/. (Their high school classmates not planning to complete college tended to work more hours and make more money.) These figures confirm what many observers have noted and many merchandisers have turned to advantage: teenagers have a good deal of money at their disposal, and much of it is available for what economists call "descretionary spending."

Not all of the college-bound were equally likely to have held a job during their senior year. More males than females worked, and they tended to work longer hours and earn more money. Racial differences were substantial; compared with whites, blacks were more than twice as likely to have no job late in their senior year, and those who were employed tended to work fewer hours.

A number of our survey questions reveal a strong consumer orientation during the high school years, and suggest that this pattern is likely to continue. Three-quarters of the females, and about half as many males, say they "very much enjoy shopping for things like clothes, records, sporting goods, and books." Most of the rest say they like it "pretty much." About 80 percent of the females and 70 percent of the males care pretty much or very much about "having the latest fashion in clothes, records, leisure activities, and so on." On the other hand, most reject the idea of keeping up with the Joneses—three-quarters say they care little or not at all about whether their family has most of the things their friends and neighbors have. Incidentally, along these dimensions there are virtually no differences between the college and noncollege groups /5A15/.

A clear majority of both groups agree or mostly agree with the statement, "My family and I often buy things we really don't need; we could get along with much less" /5A18i/. When asked what is the smallest amount they would be content to own in the future, about 45 percent of the college group and nearly as many of the others say they could be content to own less than their parents own. Most of the rest could be content to own about as much as their parents /5A17/.

Although most of them don't express a strong need to own more than their parents, 54 percent of the college-bound (compared with 41 percent of the noncollege group) expect that they will, in fact, own more. Very few expect to own less /5A16/. This personal optimism contrasts sharply with the general feeling among them that a crimp in the national lifestyle is pending. Over three-quarters agree that "there will probably be more shortages in the future, so Americans will have to learn how to be happy with fewer things" /2A3e/. It is clear, however, that they have not yet had to transfer their sense of pessimism regarding the state of the nation to their own material expectations.

What kinds of things do they want to own? A majority of both groups are committed to the "American dream." They want to own their own home (not an apartment or condominium) with a big yard, well-kept lawn, appliances, stereo, and the like. Having a car is quite or extremely important to three out of four; but two-thirds consider it not important to have a large (full-sized) car or a new car every two or three years, and about half assign little importance to having more than one car. About half think it quite or extremely important to have "clothes in the latest style" /3E10 (3E11 in 1978)/.

Are these students' material aspirations unrealistic given the economic situation they are likely to face? Perhaps, in part. During high school many were experiencing what might be termed premature affluence. The great majority were employed, and most were making fairly good money. Although many saved for college, a good number also spent a lot of their income for "discretionary" purchases—cars, records, stereos, and attractive wardrobes—rather than for rent or groceries. Up to this point in their lives, today's youth have enjoyed much more purchasing power than their parents did at a similar age, so it is perhaps understandable that many expect the pattern to continue.

Of course, it cannot—at least not on the level that some experienced during high school. Five years from now, they will find that necessities such as food and housing will cut down on the proportion—and in many cases the actual number—of dollars available for discretionary spending. But if their material expectations are somewhat unrealistic, their disappointments in future years may be cushioned by attaining goals which they rate more important than "having lots of money": marriage, parenthood, friendships, and meaningful work. And, after all, most said they could be content to own no more than their parents.

Outlook on their Personal Future. Judging by their plans and expectations for marriage, family, work, and material goods, today's high school seniors—both the college and noncollege groups—see their personal futures in mostly positive terms. When asked to think about how their lives will go in the next five years, the overwhelming majority (close to nine out of ten) say they expect things to get much better or somewhat better. (Most of the rest think things will stay about the same. Only a handful think things will get worse /4A4/.) Apparently any risks or difficulties associated with leaving the home and taking on more responsibilities is outweighed by the prospect of the new challenges, freedoms, and privileges they think adulthood will bring.

### Outlook on the Nation's Problems

While this year's students have rather rosy expectations for their own future, they are considerably more pessimistic about how things will go for the country and the world over the next five years. Since 1976 each class has been more pessimistic than the one preceding; but the shifts were rather small until this year when the proportion of pessimists (those who expect things to get worse for the country) jumped by a full twenty percent. This year three out of five of the college-bound think things will get somewhat worse or much worse for the country during the next five years, while only one in five think things will get better /4A2/. Their outlook is just about equally glum for the rest of the world /4A3/. So at the same time that they are looking forward with anticipation to their own status in life, the majority are also feeling unsettled about the social conditions which surround them. (And the noncollege group is even more pessimistic.)

Some of the specific problems they are worrying about are summarized in Figure 1 and Table 4. The national issue which has been of greatest concern to recent high school classes has been crime and violence (with roughly half saying they often worry about it). However, an issue which historically has been of less worry—the energy shortage—has now reached a level of comparable concern, partly because concern over energy has been rising but also because concern with crime has been declining somewhat. Drug abuse, pollution, and economic problems rank next among student concerns, with about 30% of senior saying they worry often about each. Slightly less often on the minds of seniors are the weighty issues of possible nuclear conflict, race relations, hunger and poverty, and population growth.

Several of these issues were a greater source of concern to earlier classes than they are to students today—pollution, population growth, hunger and poverty, and economic problems (though economic concerns are now rising again). But today's seniors worry more than their recent predecessors about the possibility of nuclear war, perhaps in part because of the public discussions prompted by SALT II. The proportions concerned about drug abuse and race relations in the country have remained fairly constant over the past several years.

Crime and Violence. According to recent polls, worries about crime have ranked high among the concerns of most Americans. For those in our survey the concerns may have a particularly vivid basis, at least if the high schools are the violent places portrayed in the media. Our survey asked seniors to report whether they themselves had been the victims of various sorts of crime. The results are disturbing. Recounting the events of the past twelve months, 28 percent reported being threatened by an unarmed person but not actually injured, while 14 percent actually suffered injury at the hands of such a person. About 5 percent reported being injured with a weapon, and another 14 percent reported being threatened (but not injured) with a weapon. Close to half reported being victims of minor theft (something worth under $50), and one-third reported that something they owned was deliberately vandalized /2A20/.

The great majority of these experiences occurred while inside school, on school grounds, or in a school bus /5E6 (3E10 in 1978)/. The college-bound and noncollege-bound seniors differed little in their reports of victimization; the college-bound are a bit more likely than average to be victims of theft, and a bit less likely to be victims of assault. Males are more often victims than females, they are also (by their own reports) much more likely to be the perpetrators of theft, vandalism, and interpersonal agression /2A19/.

Of course, high school students associate mostly with people their own age. Since people that age have just about the highest levels of criminality of any age group, perhaps it should not come as a great surprise that they are often the victims of crime, or that they worry more often about crime and violence than about any other national problem.

Environment. Today's freshmen express a considerable concern over the deterioration of the environment and the use of scarce resources. The overwhelming majority agree with the statement that "pollution has increased in the U.S. in the last ten years," and most feel that the government and the media have not exaggerated its dangers. About 60 percent of all freshmen reject the assertion that "America needs growth to survive, and that is going to require some increase in pollution." Three-quarters agree or mostly agree that "people will have to change their buying habits and way of life to correct our environmental problems." They also strongly support banning products which risk harm to the environment, and they favor "pollution taxes" to encourage less environmentally damaging ways of producing products /4A6/.

Over the last several years we have found the college-bound to be somewhat higher than their classmates in level of environmental concern and in willingness to make sacrifices to help deal with the problems.

Energy. The energy problem is another concern on the minds of freshmen. Over the past several years our surveys have asked about efforts that have been made to cut down on energy consumption. About four out of five freshmen report that in their house or apartment an effort is made to reduce heat during the winter to save energy; and about two-thirds report that they make an effort to cut down on the amount of electricity they use /5A13-14/. (These proportions have been virtually unchanged since 1977.)

But perhaps the area in which young people have the greatest discretion about whether they reduce energy consumption is in the use of automobiles. Cars are an exceedingly important part of the lifestyle of high school and college students. The majority of seniors not headed for college own cars, as do a substantial minority of the college-bound. Most of the rest have access to a car /5A10-11/.

Consistently over several recent years, roughly half of the seniors (both college and noncollege groups) reported making some or quite a bit of effort to cut down on driving in order to save gasoline. Our survey of the high school class of 1979 was conducted last spring in the midst of considerable attention to gasoline shortages; nevertheless, responses differed only slightly from those in 1978. More than 40 percent of the seniors with driver's licenses said that they had made "not very much" effort, or none at all, to cut down on driving /5A12/.

Race Relations. While about one in five of the college-bound state that they often worry about race relations in this country, most seem fairly optimistic about the way things are going. When asked whether relations between whites and blacks have been getting better or worse, three-quarters of the college-bound group (and two-thirds of their high school classmates) say better or a little better, and most of the rest say relations have stayed about the same. Interestingly, blacks and whites give just about the same range of responses to these two questions, with slightly higher proportions of blacks at the positive end of the scales /5A8/. Asked to evaluate the experiences they personally have had with people of other races, a large majority say very good or mostly good, and most of the rest rate the experiences as mixed. Only a handful rate the experiences as predominantly bad /3A17/.

A number of surveys have shown that college-educated whites hold more positive (i.e., less discriminatory) racial attitudes than those without a college education. This pattern shows up clearly only among those whose college experience occurred in the post-World War II years. Until a few years ago the most plausible interpretation seemed to be that the college experience itself was responsible for these differences. Our own longitudinal study of young men, completed several years ago, revealed modest differences in racial attitudes between those whites in the high school class of 1969 who went to college and those who did not. However, these differences were quite evident by the end of high school, before any socializing effect of college could have taken place. We interpreted our findings as suggesting that "the seventies represent a stage in which (a) the brighter and more able students show more positive racial attitudes before they leave high school, and (b) the gap in racial attitudes between educational groups is growing smaller" (Bachman, O'Malley, & Johnston, 1978, p. 147).

The more recent findings from high school seniors in the graduating classes of 1975 through 1979 fit very well with this interpretation. The college-bound are consistently, but only slightly, more favorable than their classmates toward having people of other races included among their friends, supervisors, co-workers, neighbors, and children's friends. The more important finding is that both the college and noncollege groups show overwhelming proportions saying that these various forms of interracial contact would be acceptable and, in many cases, desirable. Only small proportions (generally about ten percent of college-bound, and fifteen to twenty percent of noncollege-bound) express reservations about such contact /3A7-10/. If their answers are to be believed, the attitudes of this new generation bode well for the future of race relations in this country.

Drug Abuse[5]. It may not be surprising that a number of students find themselves worrying about drug abuse, given the degree to which they are exposed to it in their peer group. By the end of their senior year in high school over a third of all students have illicitly used at least one drug other than marijuana at some time. Using marijuana has become commonplace for this age group, and the proportion using continues to rise. Nearly all students have at least some friends who use it, six in ten have tried it themselves, a third have used it twenty or more times, and one in every nine or ten seniors tokes up daily or near daily. (In fact, a substantial rise in daily use over the last few years is now of considerable concern to policy makers and health experts.) By way of contrast, the proportion reporting daily drinking has remained rather steady over the last five senior classes at around 6%.

Fortunately, despite the growing numbers using marijuana, the proportion who go on to the more serious illicit drugs (like stimulants, sedatives, hallucinogens, or narcotics) has been quite stable for the last four years. Particular drugs have been rising in popularity (e.g. cocaine) while others have been declining (hallucinogens and sedatives), but the overall proportion involved in the illicit use of any of these drugs has remained quite steady.

There are substantial differences between the college-bound and those not heading for college in their degree of involvement with illicit drugs. The differences are not so great in terms of the proportion of each group which has tried them, but rather in terms of the proportion who have become more heavily involved. Daily use of marijuana, for example, is nearly twice as high among the noncollege-bound as among their peers, and frequent use of most of the other illicit drugs also tends to be disproportionately concentrated in this group. (Frequent alcohol use and, in particular, regular cigarette smoking are also much more common in the noncollege segment.)

It may come as a surprise that, while illicit drug use is more common in this generation than in any preceding one, the majority of today's youth still hold quite conservative views on the subject. Over three-fourths of the seniors disapprove of someone even experimenting with the more serious illicit drugs (i.e. drugs other than marijuana), and most strongly disapprove such experimentation. The majority believe that users of all such drugs run a substantial risk of harming themselves and/or others. While the risk believed to be attached to simply experimenting with various of these drugs has been declining slightly, personal disapproval of using them has remained unchanged.

Marijuana presents the one exception to this pattern of a steady conservatism by the majority. Disapproval of this drug has continued to decline in the last few years as actual use has been rising. Now, occasional use receives the acceptance of the majority, and experimentation the acceptance of nearly all. However, regular marijuana use still is seen as unwise and is viewed with disapproval by two-thirds of all seniors despite the fact that an increasing minority has been using regularly.

Concerns about the health consequences of drugs certainly are not the only factors limiting their use. To take one important example, we find that students who are the most involved in religion are considerably less likely than average to use drugs. Both religious involvement and abstention from drug use probably reflect a young person's pre-existing tendency toward traditional values, and we suspect that adherence to traditional values explains in large part the limited numbers who are attracted to illicit drug use. Alcohol use, on the other hand, which is not proscribed under traditional American mores, is almost universal in this age group. Nine in every ten high school seniors used alcohol in the prior year and 40% reported heavy drinking on at least one occasion during the two weeks prior to the survey. (Heavy drinking is here defined as five or more drinks in a row.) And there is no sign that this traditional drug has become any less popular among American young people over the last half decade; in fact, if anything, we have been observing a modest increase in its popularity (though not a dramatic increase as is sometimes suggested in the media).

National Defense and the Military. When we think of college students in the late sixties, the spectre of anti-war protests and demonstrations spring immediately to mind. Are today's students much different?

According to an earlier series of surveys reported by Yankelovich (1974), anti-military sentiment on campus probably hit its peak around 1970 and started to decline soon thereafter. Since 1975 our own surveys of high school seniors have shown predominantly positive views of the military, with the noncollege-bound a bit more "hawkish" than their counterparts.

About 44 percent of the college-bound think that the U.S. military is doing a good or very good job for the country (a 6 percent drop compared with 1976-1978). Just over three-fifths think the armed services presently have just about the right amount of influence on the way the country is run, while just over two-fifths think the level of military spending is just about right. The remainder of the college-bound are split, with the larger portion preferring increased military influence and spending rather than less. Among those not headed for college, the tilt is even stronger in that direction. Although the majority in both college and noncollege groups sees military spending and influence as at least adequate, the proportion preferring some increase has grown slowly but steadily since 1975 /3A24-26/.

Preferences that the U.S. should be number one in military power have risen somewhat over the past several years. In 1979, 64 percent of the college-bound disagree (or mostly disagree) with the assertion that "the U.S. does not need to have greater military power than the Soviet Union" (up from 52 percent in 1975). On the other hand, opinion is split just about evenly over the stronger statement: "the U.S. ought to have much more military power than any other nation in the world." Here again, the views of the noncollege group average just a bit more "hawkish" than those of the college-bound /2A18e-f/.

Views about what constitute appropriate uses of this military power show some degree of complexity, if not inconsistency. Three-quarters of the college-bound and slightly more of the noncollege group tend to agree that "the only good reason for the U.S. to go to war is to defend against an attack on our own country." Nevertheless, about three-fifths of both groups also agree (or agree mostly) that "the U.S. should be willing to go to war to protect its own economic interests." There is a good deal less enthusiasm for the statement "there may be times when the U.S. should go to war to protect the rights of other countries"—those who disagree outnumber those who agree by almost two to one /2A18b-d/. This reluctance very likely reflects, at least in part, the memories of Vietnam. But it may also show the effects of more recent events such as Middle East tensions and talk of reinstituting the military draft.

For young people finishing high school, the military is more than just an instrument of national policy. It is also an institution in which they might spend the next several years of their lives. How do they feel about that possibility? They see military service as a good place to get more education, advance to more responsible positions, and even have a personally fulfilling job. On the other hand, the military is not perceived as a good place for people to get their ideas heard or get things set right if they are treated unjustly by a superior /4E2/. In balance, the overwhelming majority of freshmen and a large majority of their high school classmates seem to think that military service is a fine idea and a worthy calling—for someone else.

## Views on Politics and the System

Given all the concerns about national problems reviewed above, and given the growing pessimism about the possibility of things getting worse in this country over the next five years, the question arises as to whether young people still have much confidence in the nation and its system of governance. Apparently many of them do. About two-thirds of the college-bound (and 56 percent of the noncollege group) agree or mostly agree with the statement, "despite its many faults, our system of doing things is still the best in the world" /1A11f/.

But what about some of the institutions which help to make up the system? We listed a dozen and asked students to rate them in terms of the honesty and morality of their leaders, how good a job they are doing for the country, and whether they should have more or less influence than they do now. The results are summarized in Tables 5 through 8. Perhaps the most important thing to note is that the relationships among the different questions are fairly complex—the world is not seen simply in terms of the "good guys" and the "bad guys."

There are several institutions which do seem to get consistently positive ratings. An overwhelming majority think that the nation's colleges and universities are doing a good or very good job for the country. (The ratings for public schools are, incidentally, much less enthusiastic.) As we have already discussed, the military is another institution with relatively few critics, many who think it is doing a good job, and about one third who think it ought to have more influence. The U.S. Supreme Court also gets mostly favorable ratings.

The President and his administration, and also the Congress, get more mixed reviews. They score very low in terms of the job they are doing for the country, and a lot of seniors think there are considerable problems of dishonesty and immorality. Still, a fair number think the President and Congress ought to have more influence than they do now—perhaps on the assumption that having more influence would help them do a better job.

Large corporations are more likely to be seen as doing a good job, but they also get poor ratings on honesty and morality. The picture for major labor unions is much the same, except that fewer rate them as doing a good job for the country. Significantly, a substantial proportion of seniors feel that both of these major elements in the private sector should have less influence in our society.

There is a strong law and order theme sounded by this year's graduating seniors. As we noted earlier, one of the national problems they worry most about is crime and violence; and now we see that the institutions most often nominated for increased influence are the police and law enforcement agencies. Just about half think they should be more influential, even though they get only about average ratings in terms of morality or how good a job they are doing.

In sum, today's seniors seem most alienated from big business and big labor. Though less than thrilled with the performance or integrity of the various branches of government, they would like to see them have greater influence than at present. Their attitudes about universities, churches, and the military as institutions are for the most part quite favorable. And, finally, they would like to see the police and other law enforcement agencies have more influence.

Tactics for Social Change. When asked about the proper tactics for bringing about social change, those planning to complete college make sharp distinctions between those actions which they approve and those which they disapprove. One set of questions asks whether students approve of various actions, and another set asks how effective they think each action strategy is likely to be. As Table 9 shows, the actions range from such widely accepted things as voting and writing to public officials all the way to committing property damage and personal violence. The critical dividing line for acceptability is legality; illegal actions receive little approval. The noncollege group shows a fairly similar pattern of answers, although the distinctions are not as sharp.

How effective do they see these actions as being? Again, the lawful actions get more votes, but an appreciable proportion feel that those actions of which they disapprove are nevertheless very effective or at least somewhat effective. For example, only about four percent of the college-bound approve of blocking traffic as a protest tactic, but about one quarter of them think it is effective. Practically none of them approve destruction and violence as tactics, yet nearly one in five think these are likely to be effective.

What about their own actions? Do many of the college-bound think they are likely to engage in various forms of political participation and activism? Nearly all expect to vote (94 percent, compared with 82 percent for the noncollege group). Other actions that they expect to take (or have already taken) include: writing to public officials (about half), boycotting certain products or stores (about one in three), working in a political campaign (about one in four). The proportion of the noncollege group saying they are likely to be involved in each of these possible actions is distinctly smaller /2A17/. Thus, the college group is much more committed to taking action, as well as being somewhat more optimistic about its effectiveness.

Are today's students more conservative than their predecessors? It depends how you define conservative. In terms of public protest and defiance of the system there can be no question that they are less active than college students in the Vietnam war years. In terms of attitudes toward the police, the military, and defense policy generally, they appear to be somewhat more conservative than their recent predecessors. On domestic issues like racial equality and sexual equality they appear to be becoming more liberal. The same holds true for their attitudes about marijuana use (but not other drugs). And their desire for shift of influence away from the private sector (big business and big labor) and toward the public sector will send a chill through most conservatives.

When we ask the students what political labels they assign to themselves, the picture does not get much clearer. Over half of the college-bound, and still more of the noncollege group, say they have no preference or they haven't decided. (In the mid-sixties, only about one quarter fell into this category.) Asked to place themselves on a scale ranging from very conservative at one end, to radical at the opposite end, 21 percent of the college-bound (and 37 percent of the noncollege group) still say none of the above, or don't know. For the rest, the most popular point on the scale is moderate, followed by liberal, than conservative. Fewer than three percent fall into either the very conservative or the radical ends of the scale. It seems clear from all this that one single label will not fit all—or even most—of today's youth.

## FOOTNOTES

[1] We are grateful to Dawn Bare, whose assistance in preparing this manuscript included generating and organizing data, editing, and a wide range of other activities that supported the research. We appreciate also the work of Walter Gruhn in preparing the 1979 data for analysis ahead of schedule, and Pamela Kittel in carrying out the analysis runs. Thanks are also due to Stephanie Zimmerman and her colleagues at Westinghouse Learning Corporation who facilitated questionnaire scoring in order to accommodate our needs for early reporting. We appreciate the contributions of our colleagues Patrick O'Malley and Regula Herzog in several of the areas reported in this paper; and we acknowledge also the contributions of Arthur Miller, Maria Sanchez, and Graham Staines in making available data from other studies of attitudes about political matters and about work.

[2] It should be pointed out that this occasional paper is essentially the manuscript which was submitted to Psychology Today, augmented with additional data from the high school classes of 1976, 1977, and 1978. The final form of the article in the September, 1979 issue of Psychology Today is a greatly shortened version. It should also be noted that this paper results from a very early, and necessarily somewhat limited, examination of 1979 data. It is made available in the interest of timeliness, and is not based on an in-depth analysis of all the issues touched upon.

[3] The notation /1-5C6/ indicates that the information about marital expectations was obtained from question number 6 in Part C of questionnaire forms 1 through 5 (i.e., all questionnaire forms). This form of notation is used throughout the paper to indicate the question number(s) of the relevant questionnaire item(s) corresponding to particular statements in the text. (When data are presented in a table, the question source is noted on the table rather than in the text.) Except when otherwise specified, the question numbers are the same for data collected from high school seniors in 1976 through 1979.

Those wishing to examine the questions and response distributions in greater detail are referred to three volumes containing the information from the classes of 1976 through 1978 (Bachman, Johnston, & O'Malley, 1979a & b; Johnston, Bachman, & O'Malley, 1979). The volume containing data from the class of 1979 will be available at a later date. Data from the class of 1975 are also available (Johnston & Bachman, 1979); however, there was a high level of missing data on the college plans measure in 1975, thus making it inappropriate to report separate tabulations for the two college groups. It is for this reason that 1975 data have not been included in most of the tables in this paper.

[4] This section is adapted from a more extensive analysis of these data reported by Herzog, Bachman, & Johnston (1979).

[5] This section is adapted largely from material included in an extensive report on drug use and related attitudes (Johnston, Bachman, & O'Malley, 1979).

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## Table 1
## Things Rated Extremely Important in Life [1A7]

| | College Plans: Complete Four Years | | | | College Plans: None or Under Four Years | | | |
|---|---|---|---|---|---|---|---|---|
| | 1976 | 1977 | 1978 | 1979 | 1976 | 1977 | 1978 | 1979 |
| A good marriage and family life | 75 | 74 | 76 | 79 | 71 | 73 | 75 | 76 |
| Strong friendships | 65 | 64 | 68 | 69 | 53 | 57 | 60 | 57 |
| Finding purpose and meaning in life | 68 | 66 | 69 | 66 | 60 | 58 | 62 | 62 |
| Finding steady work | 63 | 59 | 64 | 65 | 63 | 64 | 65 | 67 |
| Being successful in my work | 58 | 58 | 62 | 63 | 46 | 49 | 50 | 52 |
| Having lots of money | 14 | 15 | 14 | 16 | 15 | 18 | 17 | 18 |
| Making a contribution to society | 24 | 25 | 24 | 23 | 12 | 12 | 12 | 10 |
| Being a leader in my community | 9 | 9 | 10 | 10 | 5 | 4 | 4 | 4 |

Table 2

Things Rated Very Important in a Job [4A8]

| | College Plans: Complete Four Years | | | | College Plans: None or under Four Years | | | |
|---|---|---|---|---|---|---|---|---|
| | 1976 | 1977 | 1978 | 1979 | 1976 | 1977 | 1978 | 1979 |
| Interesting to do | 90 | 91 | 91 | 92 | 86 | 85 | 88 | 87 |
| Uses skills and abilities | 74 | 74 | 74 | 74 | 68 | 74 | 70 | 70 |
| See results of what you do | 60 | 60 | 61 | 61 | 57 | 57 | 60 | 58 |
| Good chances for advancement | 54 | 59 | 61 | 64 | 59 | 63 | 65 | 66 |
| Predictable, secure future | 60 | 60 | 61 | 63 | 63 | 64 | 66 | 66 |
| Chance to make friends | 55 | 55 | 56 | 57 | 54 | 57 | 53 | 56 |
| Worthwhile to society | 49 | 48 | 48 | 48 | 41 | 43 | 39 | 40 |
| Chance to earn a good deal of money | 41 | 41 | 43 | 47 | 51 | 54 | 57 | 60 |
| A job most people look up to, respect | 34 | 35 | 37 | 37 | 33 | 34 | 36 | 35 |
| High status, prestige | 20 | 21 | 23 | 26 | 19 | 22 | 25 | 24 |

### Table 3

### Desirability of Different Work Settings [5A5]

| | College Plans: Complete Four Years | | | | College Plans: None or Under Four Years | | | |
|---|---|---|---|---|---|---|---|---|
| | 1976 | 1977 | 1978 | 1979 | 1976 | 1977 | 1978 | 1979 |
| **Being self-employed** | | | | | | | | |
| Desirable | 44 | 43 | 44 | 46 | 42 | 42 | 43 | 47 |
| Not Acceptable | 10 | 10 | 9 | 8 | 15 | 14 | 13 | 10 |
| **A small group of partners** | | | | | | | | |
| Desirable | 21 | 20 | 22 | 24 | 17 | 17 | 18 | 17 |
| Not Acceptable | 9 | 10 | 9 | 10 | 13 | 14 | 15 | 14 |
| **A small business** | | | | | | | | |
| Desirable | 19 | 20 | 20 | 21 | 24 | 22 | 23 | 22 |
| Not Acceptable | 5 | 4 | 4 | 4 | 5 | 6 | 5 | 4 |
| **A school or university** | | | | | | | | |
| Desirable | 28 | 23 | 18 | 21 | 9 | 9 | 7 | 8 |
| Not Acceptable | 14 | 15 | 19 | 25 | 34 | 38 | 37 | 36 |
| **A social service organization** | | | | | | | | |
| Desirable | 23 | 21 | 18 | 20 | 17 | 16 | 16 | 15 |
| Not Acceptable | 14 | 18 | 20 | 22 | 21 | 22 | 25 | 22 |
| **A large corporation** | | | | | | | | |
| Desirable | 14 | 16 | 18 | 23 | 13 | 15 | 15 | 18 |
| Not Acceptable | 9 | 8 | 8 | 6 | 10 | 10 | 7 | 6 |
| **A government agency** | | | | | | | | |
| Desirable | 21 | 19 | 15 | 19 | 15 | 16 | 13 | 14 |
| Not Acceptable | 15 | 14 | 16 | 15 | 26 | 26 | 28 | 28 |
| **A police department** | | | | | | | | |
| Desirable | 14 | 12 | 11 | 11 | 15 | 14 | 14 | 13 |
| Not Acceptable | 24 | 30 | 30 | 29 | 29 | 33 | 33 | 31 |
| **The military service** | | | | | | | | |
| Desirable | 10 | 7 | 6 | 5 | 12 | 11 | 10 | 8 |
| Not Acceptable | 42 | 48 | 47 | 50 | 37 | 40 | 43 | 48 |

Table 4

Problems Facing the Nation (5A4)

| *Of all the problems facing the nation today, how often do you worry about each of the following?* | Percent who worry often | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | College Plans: Complete Four Years | | | | | College Plans: None or Under Four Years | | | | |
| | 1975 | 1976 | 1977 | 1978 | 1979 | 1975 | 1976 | 1977 | 1978 | 1979 |
| Chance of nuclear war | 8 | 12 | 15 | 16 | *20* | 7 | 9 | 15 | 14 | *18* |
| Population growth | 20 | 21 | 17 | 15 | *12* | 20 | 17 | 14 | 14 | *12* |
| Crime and violence | 53 | 56 | 52 | 48 | *45* | 54 | 52 | 53 | 50 | *46* |
| Pollution | 40 | 41 | 38 | 34 | *30* | 35 | 31 | 33 | 27 | *24* |
| Energy shortages | 40 | 30 | 44 | 33 | *48* | 33 | 27 | 36 | 30 | *45* |
| Race relations | 27 | 24 | 22 | 24 | *19* | 16 | 17 | 19 | 16 | *14* |
| Hunger and poverty | 29 | 25 | 20 | 20 | *16* | 25 | 20 | 20 | 21 | *16* |
| Economic problems | 33 | 29 | 24 | 21 | *29* | 30 | 20 | 18 | 15 | *18* |
| Drug abuse | 27 | 31 | 29 | 28 | *29* | 34 | 31 | 33 | 33 | *32* |

## Table 5

## Ratings of Institutions [2D4]

| *To what extent are there problems of dishonesty and immorality in the leadership of...* | Percent who think that the institution has considerable dishonesty/immorality | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | **College Plans: Complete Four Years** | | | | **College Plans: None or Under Four Years** | | | |
| | 1976 | 1977 | 1978 | 1979 | 1976 | 1977 | 1978 | 1979 |
| **Large corporations** | 42 | 40 | 41 | 41 | 32 | 35 | 30 | 33 |
| **Major labor unions** | 42 | 40 | 41 | 41 | 32 | 33 | 30 | 31 |
| **Colleges and universities** | 19 | 18 | 18 | 20 | 20 | 20 | 21 | 22 |
| **Public schools** | 23 | 22 | 26 | 23 | 23 | 23 | 26 | 22 |
| **Churches and religious organizations** | 17 | 19 | 18 | 18 | 18 | 21 | 23 | 22 |
| **National news media** | 33 | 35 | 36 | 36 | 33 | 33 | 35 | 32 |
| **President and administration** | 42 | 31 | 35 | 37 | 38 | 34 | 33 | 36 |
| **Congress** | 37 | 35 | 39 | 39 | 34 | 34 | 32 | 36 |
| **U.S. Supreme Court** | 20 | 21 | 19 | 23 | 23 | 25 | 26 | 25 |
| **Courts and justice system** | 26 | 25 | 23 | 24 | 23 | 26 | 25 | 24 |
| **Police and law enforcement agencies** | 35 | 31 | 33 | 31 | 31 | 34 | 32 | 34 |
| **U.S. Military** | 21 | 20 | 21 | 21 | 20 | 21 | 20 | 23 |

### Table 6

### Ratings of Institutions [3A24]

| *How good or bad a job is being done for the country as a whole by...* | Percent who think that the institution has been doing a good job<br>College Plans: Complete Four Years<br>1976 | 1977 | 1978 | 1979 | College Plans: None or Under Four Years<br>1976 | 1977 | 1978 | 1979 |
|---|---|---|---|---|---|---|---|---|
| **Large corporations** | 30 | 31 | 37 | *33* | 33 | 34 | 38 | *33* |
| **Major labor unions** | 32 | 32 | 30 | *27* | 34 | 33 | 31 | *34* |
| **Colleges and universities** | 80 | 82 | 80 | *82* | 68 | 70 | 71 | *71* |
| **Public schools** | 45 | 41 | 36 | *41* | 46 | 46 | 43 | *44* |
| **Churches and religious organizations** | 55 | 59 | 58 | *58* | 56 | 54 | 56 | *57* |
| **National news media** | 60 | 60 | 61 | *61* | 60 | 59 | 61 | *58* |
| **President and administration** | 21 | 47 | 26 | *23* | 21 | 36 | 26 | *19* |
| **Congress** | 25 | 31 | 25 | *20* | 21 | 24 | 24 | *18* |
| **U.S. Supreme Court** | 40 | 42 | 39 | *36* | 31 | 32 | 31 | *29* |
| **Courts and justice system** | 28 | 29 | 25 | *25* | 22 | 25 | 25 | *24* |
| **Police and law enforcement agencies** | 41 | 38 | 37 | *40* | 39 | 36 | 38 | *36* |
| **U.S. Military** | 51 | 51 | 50 | *44* | 58 | 56 | 57 | *47* |

## Table 7

## Ratings of Institutions [4A19]

| *Do you think the following organizations should have more influence, less influence, or about the same amount of influence as they have now?* | Percent who think that the institution should have more influence | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | College Plans: Complete Four Years | | | | College Plans: None or Under Four Years | | | |
| | 1976 | 1977 | 1978 | 1979 | 1976 | 1977 | 1978 | 1979 |
| Large corporations | 7 | 8 | 8 | 6 | 13 | 14 | 14 | 14 |
| Major labor unions | 18 | 18 | 18 | 17 | 26 | 26 | 28 | 26 |
| Colleges and universities | NA | NA | NA | NA | NA | NA | NA | NA |
| Public schools | NA | NA | NA | NA | NA | NA | NA | NA |
| Churches and religious organizations | 42 | 45 | 45 | 44 | 46 | 45 | 44 | 44 |
| National news media | 18 | 17 | 16 | 18 | 24 | 24 | 26 | 22 |
| President and administration | 26 | 32 | 33 | 34 | 27 | 33 | 32 | 31 |
| Congress | 34 | 34 | 33 | 32 | 29 | 27 | 31 | 30 |
| U.S. Supreme Court | 35 | 37 | 34 | 36 | 32 | 33 | 35 | 35 |
| Courts and justice system | 39 | 41 | 38 | 38 | 35 | 35 | 36 | 37 |
| Police and law enforcement agencies | 51 | 51 | 49 | 53 | 51 | 52 | 50 | 51 |
| U.S. Military | 31 | 29 | 32 | 33 | 38 | 36 | 40 | 37 |

### Table 8
### Ratings of Institutions [4A19]

| *Do you think the following organizations should have more influence, less influence, or about the same amount of influence as they have now?* | Percent who think that the institution should have less influence |  |  |  |  |  |  |  |
|---|---|---|---|---|---|---|---|---|
|  | College Plans: Complete Four Years |  |  |  | College Plans: None or Under Four Years |  |  |  |
|  | 1976 | 1977 | 1978 | 1979 | 1976 | 1977 | 1978 | 1979 |
| Large corporations | 64 | 59 | 53 | *56* | 42 | 40 | 37 | *39* |
| Major labor unions | 48 | 47 | 47 | *46* | 32 | 30 | 30 | *30* |
| Colleges and universities | NA | NA | NA | NA | NA | NA | NA | NA |
| Public schools | NA | NA | NA | NA | NA | NA | NA | NA |
| Churches and religious organizations | 15 | 12 | 13 | *12* | 11 | 12 | 11 | *12* |
| National news media | 35 | 35 | 35 | *32* | 26 | 26 | 25 | *26* |
| President and administration | 23 | 14 | 15 | *16* | 23 | 16 | 18 | *21* |
| Congress | 16 | 14 | 16 | *17* | 18 | 18 | 17 | *18* |
| U.S. Supreme Court | 10 | 8 | 9 | *9* | 12 | 10 | 11 | *11* |
| Courts and justice system | 10 | 8 | 9 | *8* | 11 | 10 | 10 | *10* |
| Police and law enforcement agencies | 13 | 11 | 10 | *11* | 14 | 13 | 13 | *13* |
| U.S. Military | 18 | 15 | 14 | *13* | 10 | 11 | 10 | *14* |

Table 9

Tactics for Change [2A4]

| | Percent who approve of the tactic | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | College Plans: Complete Four Years | | | | College Plans: None or Under Four Years | | | |
| | 1976 | 1977 | 1978 | 1979 | 1976 | 1977 | 1978 | 1979 |
| Sign petitions | 78 | 75 | 75 | 78 | 62 | 61 | 59 | 64 |
| Lawful demonstrations | 71 | 71 | 73 | 73 | 59 | 56 | 57 | 60 |
| Boycott certain products or stores | 62 | 66 | 64 | 63 | 45 | 54 | 46 | 48 |
| Occupy buildings or factories | 16 | 16 | 15 | 17 | 24 | 24 | 27 | 28 |
| Wildcat strikes | 11 | 12 | 12 | 11 | 12 | 14 | 15 | 14 |
| Block traffic | 5 | 4 | 5 | 4 | 6 | 7 | 7 | 6 |
| Damage things | 4 | 4 | 2 | 2 | 4 | 4 | 6 | 5 |
| Personal violence | 4 | 4 | 2 | 3 | 6 | 6 | 8 | 6 |

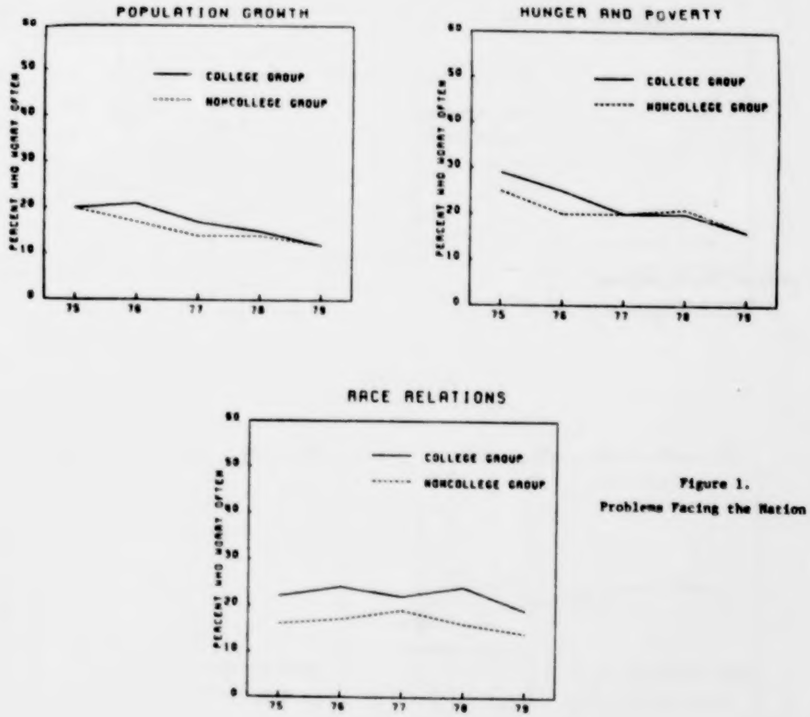


Figure 1.
Problems Facing the Nation /5A3/

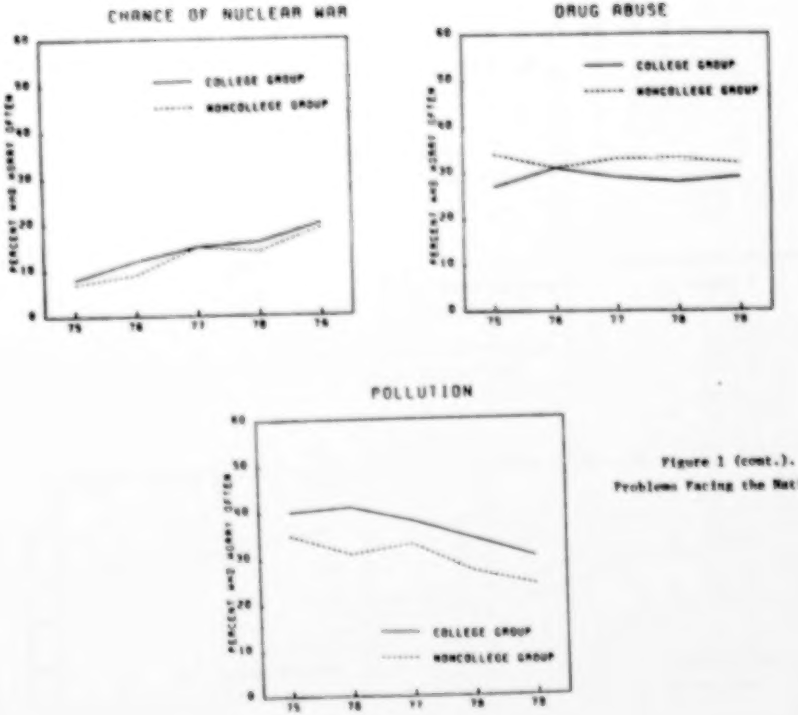
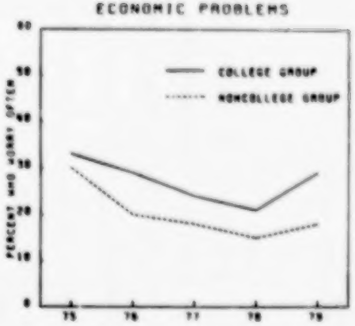
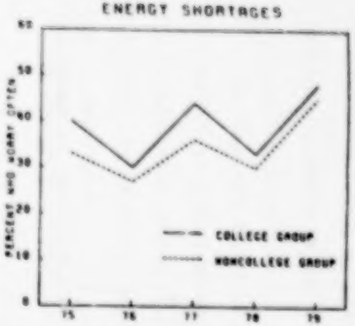


Figure 1 (cont.).
Problems Facing the Nation /5A3/





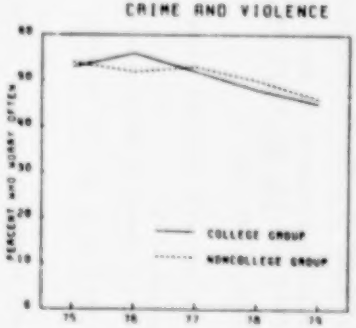


Figure 1 (cont.).
Problems Facing the Nation /5A3/

## APPENDIX H.—ADDITIONAL MATERIAL SUBMITTED BY ANTHONY WHITE, WASHINGTON STATE ATTORNEY GENERAL'S OFFICE

### EXHIBIT 1: WASHINGTON STATE DIVESTITURE LEGISLATION

BE IT ENACTED BY THE PEOPLE OF THE
STATE OF WASHINGTON:

Section 1. There is added to Title 19 RCW a new section to read as follows:

This Act may be cited as the "Competition In Gasoline Marketing Act of 1980."

Section 2. There is added to Title 19 RCW a new section to read as follows:

The people of the State of Washington hereby declare that it shall be the policy of this state to promote free and open competition in the marketing of gasoline and other motor fuels. To this end, this Act shall be liberally construed.

Section 3. There is added to Title 19 RCW a new section to read as follows:

The following words, terms or phrases are, for the purposes of this chapter, defined as follows:

(1) "Gasoline" shall include gasoline, benzoil, benzine, naptha and any other liquid derived from petroleum prepared, advertised, offered for sale, sold for use as, or used for, the

generation of power for the propulsion of motor vehicles including any product obtained by blending together any one or more products of petroleum with or without other products, if the resultant product is capable of the same use.

(2) "Special fuel" shall include diesel oil, kerosine, and heating oil or liquid derived from petroleum used in diesel engines or in internal combustion engines for the propulsion of motor vehicles, including any product obtained by blending together any one or more products of petroleum with or without other products, if the resultant product is capable of the same use. . . ."

(3) "Retail service station" means and includes any place of business where gasoline or special fuel is sold and delivered into the tanks of motor vehicles.

(4) "Major refiner" shall mean and include any person, firm or corporation engaged in refining whose total national refining capacity (including the refinery capacity of any person who controls, is controlled by, or is under common control with such refiner) exceeds 250,000 barrels per day, and who sells or distributes gasoline or special fuels in this state regardless of the source of such gasoline or special fuels. The term shall also mean and include any person, firm, or corporation engaged in refining whose total yearly sales of gasoline through such refiner's retail service stations in this state exceed ten percent of the total yearly sales of gasoline of all retail service stations in this state.

(5) "Refining" means the refining, processing or converting of crude oil or oil shale, into finished or semi-finished products.

(6) "Total national refining capacity" means the sum total in barrels per day of the crude oil operating capacities of all refineries located in the United States.

(7) "Major brand" means the primary trade name or trademark most commonly associated with and identified with a major refiner's retail service station.

(8) "Secondary brand" means a trade name or trademark, other than a major brand, used to identify a major refiner's service station.

(9) "Unbranded" means an independent retail service station dealer marketing gasoline or special fuels under its own brand name, or trademark other than those of a major refiner, or any subsidiary thereof.

Section 4. There is added to Title 19 RCW
a new section to read as follows:

(1) After January 1, 1981, no major refiner or any wholly or partly owned or controlled subsidiary thereof shall open a major brand, secondary brand, or unbranded retail service station in the State of Washington, and operate it with company personnel, a subsidiary company, or commissioned agent.

(2) After January 1, 1983, no major refiner or any wholly or party owned or controlled subsidiary of a major refiner shall own, or control, directly or indirectly, a major brand, secondary brand, or unbranded retail service station in the State of Washington, and operate it with company personnel, a subsidiary company, or commissioned agent.

(3) After the effective date of this act and on or before January 1, 1984, any major refiner and any wholly or partly owned or controlled subsidiary of a major refiner which owns, controls or operates a major brand, secondary brand, or unbranded retail service station under a lease, franchise, or fee arrangement with any person, firm, or corporation shall, upon request of the person, firm, or corporation in possession of the retail service station, offer to sell the retail service station or any interest in such retail service station to that person, firm, or corporation in possession upon reasonable terms and in good faith.

(4) It shall be presumed for purposes of paragraph (3) of this section that the offer is not in good faith if the major refiner or the major refiner's wholly or partly owned subsidiary fails to offer the interest to the person, firm, or corporation in possession upon reasonable commercial terms and at fair market value. This presumption may be rebutted by evidence to the contrary.

(5) On or after January 1, 1984, no major refiner and any wholly or partly owned or controlled subsidiary of a major refiner shall continue to own, control or operate, either directly or

indirectly, a major brand, secondary brand, or unbranded retail service station under a lease, franchise, or fee arrangement with any person, firm, or corporation, when the person, firm, or corporation managing that retail service station under the lease, franchise, or fee arrangement as of January 1, 1984, ceases to operate that retail service station.

(6) No major refiner or any wholly or partly owned or controlled subsidiary of a major refiner which sells, leases, or otherwise transfers a retail service station or any interest in a retail service station pursuant to this act or for any other reason, shall restrict in any way the use of such property or interest as a retail service station.

Section 5. There is added to Title 19 RCW
a new section to read as follows:

No major refiner or any wholly or partly owned or controlled subsidiary of a major refiner which owns, controls, or operates a major brand, secondary brand, or unbranded retail service station under a lease, franchise, or fee arrangement with any person, firm, or corporation shall require that such person, firm, or corporation purchase tires, batteries, accessories, motor oil, lubricants, and other merchandise from the major refiner, its owned or controlled subsidiary, or any other designated supplier.

Section 6. There is added to Title 19 RCW a new section to read as follows:

Any violation of this chapter shall be construed for purposes of the application of the Consumer Protection Act, Chapter 19.86 RCW, to constitute a contract or combination in unreasonable restraint of trade or commerce, an unfair act or practice and an unfair method of competition.

Section 7. There is added to title 19 RCW
a new section to read as follows:

If any provision of this 1980 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

## Exhibit 2: Correspondence between Jerry A. Blanton and Union Oil Co.

Union 76 Division. Western Region

Union Oil Company of California
2901 Western Avenue, Seattle, Washington 98121
Telephone: (206) 223-7600

union 76

October 12, 1979

Mr. Jerry A. Blanton
8001 - 15th Avenue N.E.
Seattle, Washington 98115

Dear Mr. Blanton:

RE: SERVICE STATION NO. 6381
8001 - 15TH AVENUE N.E.
SEATTLE, WASHINGTON 98115

We refer to that certain Service Station Lease dated August 22, 1978 between Union Oil Company of California (Union), as Lessor, and yourself, as Lessee, and more specifically to paragraph 1, Terms therein. Said term commenced August 22, 1978 and terminated September 21, 1978. With Union's implied consent, you as Lessee have continued as a tenant at subject location on a month-to-month basis since September 21, 1978.

Union has presented to you a lease for full-service operation which you refused to accept. Likewise, Union presented to you a new self-serve lease with policy rentals which you have also refused to accept.

Attached to this letter is a Summary of Title 1 of the Petroleum Marketing Practices Act which is required to be sent to your attention under Federal Law.

As a result of our failure to agree on changes and additions in the new leases and in line with the Petroleum Marketing Practices Act, Union hereby serves notice that effective January 15, 1980 your above stated Service Station Lease and Retail Dealer Motor Fuel Purchase Contract dated August 22, 1978 will be cancelled. On that date, you will deliver said station to Union.

By January 15, 1980 and in line with your Security Agreement dated August 22, 1978, we will appreciate removal of your personal property, except those items covered by Union's Security Agreement, from said premises unless some other mutually satisfactory arrangement has been made for the disposal of such personal property.

Again we wish to draw your attention to that certain Security Agreement dated August 22, 1978 and request that until you deliver possession of subject station, as set forth above, you must keep all personal property covered by said Security Agreement at the service station unless or until Union gives you written consent to do so or unless the personal property is sold as resaleable merchandise in the normal service station operation.

PLEASE NOTE: There cannot be any modification of the demands and deadlines set forth in this Notice except in writing. No oral "agreements" between you and any Union employee will be binding.

This Notice is a very serious matter. If there are any questions, please contact your Union representative at 223-7600, immediately.

Very truly yours,

UNION 76 DIVISION: WESTERN REGION
UNION OIL COMPANY OF CALIFORNIA

L. J. DANBERG
Area Manager Retail

REN:dl
Attach

[3128-01]

### Office of the Secretary

## SUMMARY OF TITLE I OF THE PETROLEUM MARKETING PRACTICES ACT

**AGENCY:** Department of Energy.

**ACTION:** Notice.

**SUMMARY:** This notice contains a summary of title I of the Petroleum Marketing Practices Act, a new Federal law enacted on June 19, 1978. The law is intended to protect franchised distributors and retailers of gasoline and diesel motor fuel against arbitrary or discriminatory termination or nonrenewal of franchises. The summary describes the reasons for which a franchise may be terminated or not renewed under the new law, the responsibilities of franchisors, and the remedies and relief available to franchisees. Franchisors must give franchisees copies of the summary contained in this notice whenever notification of termination or nonrenewal of a franchise is given.

**FOR FURTHER INFORMATION CONTACT:**

William C. Lane, Jr., Office of Competition, Department of Energy, 20 Massachusetts Avenue NW., Room 712, Washington, D.C. 20645, 202-376-9495.

Michael Paige or Judith H. Garfield, Office of General Counsel, Department of Energy, 12th and Pennsylvania Avenue NW., Room 5134, Washington, D.C. 20461, 202-566-9565 or 202-566-2085.

**SUPPLEMENTARY INFORMATION:** Title I of the Petroleum Marketing Practices Act, Pub. L. 95-297 (the "Act"), enacted on June 19, 1978, provides for the protection of franchised distributors and retailers of motor fuel by establishing minimum Federal standards governing the termination of franchises and the nonrenewal of franchise relationships by the franchisor or distributor of such fuel. Section 104(d)(1) of the Act provides that the Secretary of Energy shall prepare and publish in the FEDERAL REGISTER, not later than 30 days after enactment of the Act, a simple and concise summary of the provisions of title I, including a statement of the respective responsibilities of, and the remedies and relief available to, franchisors and franchisees under that title.

As required by section 104(d)(1) of the Act, the following is a summary statement of the respective responsibilities of, and the remedies and relief available to, franchisors and franchisees. Franchisors must give copies of this summary statement to their franchisees when entering an agreement to terminate the franchise or not to renew the franchise relationship, and when giving notification of termination or nonrenewal. In addition to the summary of the provisions of title I, a more detailed description of the definition contained in the Act and of the legal remedies available to franchisees is also included in this notice, following the summary statement.

### SUMMARY OF LEGAL RIGHTS OF MOTOR FUEL FRANCHISEES

This is a summary of the franchise protection provisions of the Federal Petroleum Marketing Practices Act. This summary must be given to you, as a person holding a franchise for the sale, consignment or distribution of gasoline or diesel motor fuel, in connection with any termination or nonrenewal of your franchise by your franchising company (referred to in this summary as your supplier).

The franchise protection provisions of the Act apply to a variety of franchise arrangements. The term "franchise" is broadly defined as a license to use a motor fuel trademark which is owned or controlled by a refiner, and it includes secondary arrangements such as leases of real property and motor fuel supply agreements which have existed continuously since May 15, 1973 regardless of a subsequent withdrawal of a trademark. Thus, if you have lost the use of a trademark previously granted by your supplier but have continued to receive motor fuel supplies through a continuation of a supply agreement with your supplier, you are protected under the Act.

You should read this summary carefully, and refer to the Act if necessary, to determine whether a proposed termination or nonrenewal of your franchise is lawful, and what legal remedies are available to you if you think the proposed termination or failure to renew is not lawful. In addition, if you think your supplier has failed to comply with the Act, you may wish to consult an attorney in order to enforce your legal rights.

The Act is intended to protect you, whether you are a distributor or a retailer, from arbitrary of discriminatory termination or nonrenewal of your franchise agreement. To accomplish this, the Act first lists the reasons for which termination or nonrenewal is permitted. Any notice of termination or nonrenewal must state the precise reason, as listed in the Act, for which the particular termination or nonrenewal is being made. These reasons are described below under the headings "Reasons for Termination" and "Reasons for Nonrenewal."

You should note that the Act does not restrict the reasons which may be given for the termination of a franchise agreement entered into before the June 19, 1978 effective date of the Act. However, any nonrenewal of such a terminated franchise must be based on one of the reasons for nonrenewal summarized below.

The Act also requires your supplier to give you a written notice of termination or intention not to renew the franchise within certain time periods. These requirements are summarized below, under the heading "Notice Requirements for Termination or Nonrenewal."

The Act allows trial and interim franchise agreements, which are described below under the heading "Trial and Interim Franchises."

The Act gives you certain legal rights if your supplier terminates or does not renew your franchise in a way that is not permitted by the Act. These legal rights are described below under the heading "Your Legal Rights."

This summary is intended as a simple and concise description of the general nature of your rights under the Act. For a more detailed description of these rights, you should read the text of the Petroleum Marketing Practices Act itself (Pub. L. 95-297, 92 Stat. 322, 15 U.S.C. 2801).

### I. REASONS FOR TERMINATION

The following is a list of the only reasons for which your franchise is permitted to be terminated by the Act. One or more of these reasons must be specified if your franchise was entered into on or after June 19, 1978 and is being terminated. If your franchise was entered into before June 19, 1978, as discussed above, there is no statutory restriction on the reasons for which it may be terminated. If such a franchise is terminated, however, the Act requires the supplier to renew the franchise relationship unless one of the reasons listed under this heading or one of the additional reasons for nonrenewal described below under the heading "Reasons for Nonrenewal" exists.

If your supplier attempts to terminate a franchise which you entered into on or after June 19, 1978 for a reason that is not listed under this heading, you can take the legal action against your supplier that is described below under the heading "Your Legal Rights."

*Noncompliance with franchise agreement.* Your supplier may terminate your franchise if you do not comply with a reasonable and important requirment of the franchise relationship. In order to use this reason, your supplier must have learned of this non-compliance recently. The Act limits the time period within which your supplier must have learned of your non-compliance to various periods, the longest of which is 120 days, before you receive notification of the termination.

*Lack of good faith efforts.* Your supplier may terminate your franchise if you have not made good faith efforts to carry out the requirements of the franchise, provided you are first notified in writing that you are not meeting a requirement of the franchise and you are given an opportunity to make a good faith effort to carry out the requirement. This reason can be used by your supplier only if you fail to make good faith efforts to carry out the requirements of the franchise for a period of 180 days before you receive the notice of termination.

*Mutual agreement to terminate the franchise.* A franchise can be terminated by an agreement in writing between you and your supplier if the agreement is entered into not more than 180 days before the effective date of the termination and you receive a copy of this agreement, together with this summary statement of your rights under the Act. You may cancel the agreement to terminate within 7 days after you receive a copy of the agreement, by mailing (by certified mail) a written statement to this effect to your supplier.

*Withdrawal from the market area.* Under certain conditions, the Act permits your supplier to terminate your franchise if your supplier is withdrawing from marketing activities in the entire geographic area in which you operate. You should read the Act for a more detailed description of the conditions under which market withdrawal terminations are permitted.

*Other events permitting a termination.* If your supplier learns within the time period specified in the Act (which in no case is more than 120 days prior to the termination notice) that one of the following events has occurred, your supplier may terminate your franchise agreement:

(1) Fraud or criminal misconduct by you that relates to the operation of your marketing premises.

(2) You declare bankruptcy or a court determines that you are insolvent.

(3) You have a severe physical or mental disability lasting at least 3 months which makes you unable to provide for the continued proper operation of the marketing premises.

(4) Expiration of your supplier's underlying lease to the leased marketing premises, if you were given written notice before the beginning of the term of the franchise of the duration of the underlying lease and that the underlying lease might expire and not be renewed during the term of the franchise.

(5) Condemnation or other taking by the government, in whole or in part, of the marketing premises pursuant to the power of eminent domain. If the termination is based on a condemnation or other taking, your supplier must give you a fair share of any compensation which he receives for any loss of business opportunity or good will.

(6) Loss of your supplier's right to grant the use of the trademark that is the subject of the franchise, unless the loss was because of bad faith actions by your supplier relating to trademark abuse, violation of Federal or State law, or other fault or negligence.

(7) Destruction (other than by your supplier) of all or a substantial part of your marketing premises. If the termination is based on the destruction of the marketing premises and if the premises are rebuilt or replaced by your supplier and operated under a franchise, your supplier must give you a right of first refusal to this new franchise.

(8) Your failure to make payments to your supplier of any sums to which your supplier is legally entitled.

(9) Your failure to operate the marketing premises for 7 consecutive days, or any shorter period of time which, taking into account facts and circumstances, amounts to an unreasonable period of time not to operate.

(10) Your intentional adulteration, mislabeling or misbranding of motor fuels or other trademark violations.

(11) Your failure to comply with Federal, State, or local laws or regulations of which you have knowledge and that relate to the operation of the marketing premises.

(12) Your conviction of any felony involving moral turpitude.

(13) Any event that affects the franchise relationship and as a result of which termination is reasonable.

## II. REASONS FOR NONRENEWAL

If your supplier gives notice that he does not intend to renew any franchise agreement, the act requires that the reason for nonrenewal must be either one of the reasons for termination listed immediately above, or one of the reasons for nonrenewal listed below.

*Failure to agree on changes or additions to franchise.* If you and your supplier fail to agree to changes in the franchise that your supplier in good faith has determined are required, and your supplier's insistence on the changes is not for the purpose of preventing renewal of the franchise, your supplier may decline to renew the franchise.

*Customer complaints.* If your supplier has received numerous customer complaints relating to the condition of your marketing premises or to the conduct of any of your employees, and you have failed to take prompt corrective action after having been notified of these complaints, your supplier may decline to renew the franchise.

*Unsafe or unhealthful operations.* If you have failed repeatedly to operate your marketing premises in a clean, safe and healthful manner after repeated notices from your supplier, your supplier may decline to renew the franchise.

*Operation of franchise is uneconomical.* Under certain conditions specified in the act, your supplier may decline to renew your franchise if he has determined that renewal of the franchise is likely to be uneconomical. Your supplier may also decline to renew your franchise if he has decided to convert your marketing premises to a use other than for the sale of motor fuel, to sell the premises, or to materially alter, add to, or replace the premises.

## III. NOTICE REQUIREMENTS FOR TERMINATION OR NONRENEWAL

The following is a description of the requirements for the notice which your supplier must give you before he may terminate your franchise or decline to renew your franchise relationship. These notice requirements apply to all franchise terminations, including franchises entered into before June 19, 1978 and trial and interim franchises, as well as to all nonrenewals of franchise relationships.

*How much notice is required.* In most cases, your supplier must give you notice of termination or nonrenewal at least 90 days before the termination or nonrenewal takes effect.

In circumstances where it would not be reasonable for your supplier to give you 90 days notice, he must give you notice as soon as he can do so. In addition, if the franchise involves leased marketing premises, your supplier may not establish a new franchise relationship involving the same premises until 30 days after notice was given to you or the date the termination or nonrenewal takes effect, whichever is later. If the franchise agreement permits, your supplier may repossess the premises and, in reasonable circumstances, operate them through his employees or agents.

If the termination or nonrenewal is based upon a determination to withdraw from the marketing of motor fuel in the area, your supplier must give you notice at least 180 days before the termination or nonrenewal takes effect.

*Manner and contents of notice.* To be valid, the notice must be in writing and must be sent by certified mail or personally delivered to you. It must contain:

(1) A statement of your supplier's intention to terminate the franchise or not to renew the franchise relationship, together with his reasons for this action;

(2) The date the termination or nonrenewal takes effect; and

(3) A copy of this summary.

### IV. TRIAL FRANCHISES AND INTERIM FRANCHISES

The following is a description of the special requirements that apply to trail and interim franchises.

*Trial franchises.* A trial franchise is a franchise, entered into on or after June 19, 1978, in which the franchisee has not previously been a party to a franchise with the franchisor and which has an initial term of 1 year or less. A trial franchise must be in writing and must make certain disclosures, including that it is a trial franchise, and that the franchisor has the right not to renew the frahchise relationship at the end of the initial term by giving the franchisee proper notice.

The unexpired portion of [illegible] transferred franchise (other than a trial franchise, as described above) does not qualify as a trail franchise.

In exercising his right not to renew a trail franchise at the end of its initial term, your supplier must comply with the notice requirements described above under the heading "Notice Requirements for Termination or Nonrenewal."

*Interim franchises.* An interim franchise is a franchise, entered into on or after June 19, 1978, the duration of which, when combined with the terms of all prior interim franchises between the franchisor and the franchisee, does not exceed 3 years, and which begins immediately after the expiration of a prior franchise involving the same marketing premises which was not renewed, based upon a lawful determination by the franchisor to withdraw from marketing activities in the geographic area in which the franchisee operates.

An interim franchise must be in writing and must make certain disclosures, including that it is an interim franchise and that the franchisor has the right not to renew the franchise at the end of the term based upon a lawful determination to withdraw from marketing activities in the geographic area in which the franchisee operates.

In exercising his right not to renew a franchise relationship under an interim franchise at the end of its term, your supplier must comply with the notice requirements described above under the heading "Notice Requirements for Termination or Nonrenewal."

### V. YOUR LEGAL RIGHTS

Under the enforcement provisions of the Act, you have the right to sue your supplier if he fails to comply with the requirements of the Act. The courts are authorized to grant whatever equitable relief is necessary to remedy the effects of your supplier's failure to comply with the requirements of the Act, including declaratory judgment, mandatory or prohibitive injunctive relief, and interim equitable relief. Actual damages, exemplary (punitive) damages under certain circumstances, and reasonable attorney and expert witness fees are also authorized. For a more detailed description of these legal remedies you should read the text of the Act.

## FURTHER DISCUSSION OF TITLE I—DEFINITIONS AND LEGAL REMEDIES

### I. DEFINITIONS

Section 101 of the Petroleum Marketing Practices Act sets forth definitions of the key terms used throughout the franchise protection provisions of the Act. The definitions from the Act which are listed below are of those terms which are most essential for purposes of the foregoing summary statement. (You should consult section 101 of the Act for additional definitions not included here.)

*Franchise.* A franchise is any contract between a refiner and a distributor, between a refiner and a retailer, between a distributor and another distributor, or between a distributor and a retailer, under which a refiner or distributor (as the case may be) authorizes or permits a retailer or distributor to use, in connection with the sale, consignment, or distribution of motor fuel, a trademark which is owned or controlled by such refiner or by a refiner which supplies motor fuel to the distributor which authorizes or permits such use.

The term "franchise" includes any contract under which a retailer or distributor (as the case may be) is authorized or permitted to occupy leased marketing premises, which premises are to be employed in connection with the sale, consignment, or distribution of motor fuel under a trademark which is owned or controlled by such refiner or by a refiner which supplies motor fuel to the distributor which authorizes or permits such occupancy. The term also includes any contract pertaining to the supply of motor fuel which is to be sold, consigned or distributed under a trademark owned or controlled by a refiner, or under a contract which has existed continuously since May 15, 1973, and pursuant to which, on May 15, 1973, motor fuel was sold, consigned or distributed under a trademark owned or controlled on such date by a refiner. The unexpired portion of a transferred franchise is also included in the definition of the term.

*Franchise relationship.* The term "franchise relationship" refers to the respective motor fuel marketing or distribution obligations and responsibilities of a franchisor and a franchisee which result from the marketing of motor fuel under a franchise.

*Franchisee.* A franchisee is a retailer or distributor who is authorized or permitted, under a franchise, to use a trademark in connection with the sale, consignment, or distribution of motor fuel.

*Franchisor.* A franchisor is a refiner or distributor who authorizes or permits, under a franchise, a retailer or distributor to use a trademark in connection with the sale, consignment, or distribution of motor fuel.

*Marketing premises.* Marketing premises are the premises which, under a franchise, are to be employed by the franchisee in connection with the sale, consignment, or distribution of motor fuel.

*Leased marketing premises.* Leased marketing premises are marketing premises owned, leased, or in any way controlled by a franchisor and which the franchisee is authorized or permitted, under the franchise, to employ in connection with the sale, consignment, or distribution of motor fuel.

*Fail to renew and nonrenewal.* The terms "fail to renew" and "nonrenewal" refer to a failure to reinstate, continue, or extend a franchise relationship (1) at the conclusion of the term, or on the expiration date, stated in the relevant franchise, (2) at any time, in the case of the relevant franchise which does not state a term of duration or an expiration date, or (3) following a termination (on or after June 19, 1978) of the relevant franchise which was entered into prior to June 19, 1978 and has not been renewed after such date.

### II. LEGAL REMEDIES AVAILABLE TO FRANCHISEES

The following is a more detailed description of the remedies available to the franchisee if a franchise is terminated or not renewed in a way that fails to comply with the Act.

*Franchisee's right to sue.* A franchisee may bring a civil action in United States District Court against a franchisor who does not comply with the requirements of the Act. The action must be brought within one year after the date of termination or nonrenewal or the date the franchisor fails to comply with the requirements of the law, whichever is later.

*Equitable relief.* Courts are authorized to grant whatever equiatble relief is necessary to remedy the effects of a violation of the law's requirements. Courts are directed to grant a preliminary injunction if the franchisee shows that there are sufficiently serious questions, going to the merits of the case, to make them a fair ground for litigation, and if, on balance, the hardship which the franchisee would suffer if the preliminary injunction is not granted will be greater than the hardship which the franchisor would suffer if such relief is granted.

Courts are not required to order continuation or renewal of the franchise relationship if the action was brought after the expiration of the period during which the franchisee was on notice concerning the franchisor's intention to terminate or not renew the franchise agreement.

*Burden of proof.* In an action under the Act, the franchisee has the burden of proving that the franchise was terminated or not renewed. The franchisor has the burden of proving, as an affirmative defense, that the termination or nonrenewal was permitted under the Act and, if applicable, that the franchisor complied with certain other requirements relating to terminations and nonrenewals based on condemnation or destruction of the marketing premises.

*Damages.* A franchise who prevails in an action under the Act is entitled to actual damages and reasonable attorney and expert witness fees. If the action was based upon conduct of the franchisor which was in willful disregard of the law's requirements or the franchisee's rights under the law, exemplary (punitive) damages may be awarded where appropriate. The court, and not the jury, will decide whether to award exemplary damages and, if so, in what amount.

On the other hand, if the court finds that the franchisee's action is frivolous, it may order the franchisee to pay reasonable attorney and expert witness fees.

*Franchisor's defense to permanent injunctive relief.* Courts may not order a continuation or renewal of a franchise relationship if the franchisor shows that the basis of the nonrenewal of the franchise relationship was a determination made in good faith and in the normal course of business:

(1) To convert the leased marketing premises to a use other than the sale or distribution of motor fuel;

(2) To materially alter, add to, or replace such premises;

(3) To sell such premises;

(4) To withdraw from marketing activities in the geographic area in which such premises are located; or

(5) That renewal of the franchise relationship is likely to be uneconomical to the franchisor despite any reasonable changes or additions to the franchise provisions which may be acceptable to the franchisee.

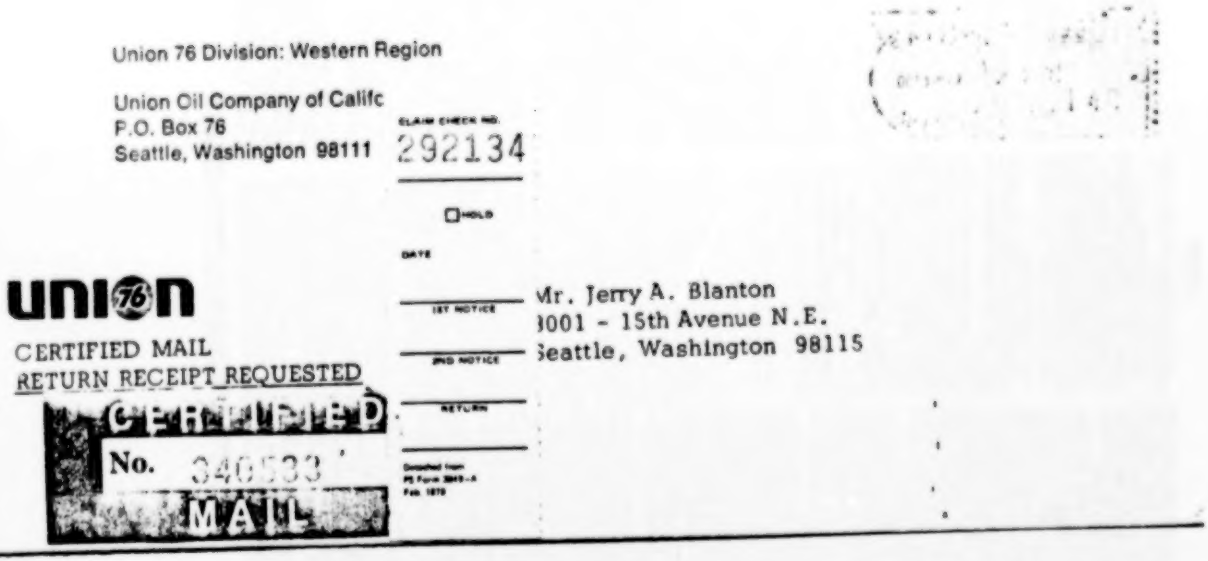
In making this defense, the franchisor also must show that he has complied with the notice requirements of the Act.

This defense to permanent injunctive relief, however, does not affect the franchisee's right to recover actual damages and reasonabale attorney and expert witness fees if the nonrenewal is otherwise prohibited under the Act.

Issued in Washington, D.C. on August 23, 1978.

JOHN F. O'LEARY,
*Deputy Secretary.*

[FR Doc. 78-24419 Filed 8-28-78; 8:45 am]



Union 76 Division: Western Region

Union Oil Company of Califc
P.O. Box 76
Seattle, Washington 98111

CLAIM CHECK NO.
292134

☐ HOLD

DATE

1ST NOTICE

2ND NOTICE

RETURN

Detached from
PS Form 3849-A
Feb. 1978

UNION 76

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

CERTIFIED
No. 340533
MAIL

Mr. Jerry A. Blanton
3001 - 15th Avenue N.E.
Seattle, Washington 98115

Re lease cancellation, service station No. 6381.

L. J. Danberg,
*Area Manager Retail, Union Oil Co. of California,*
*Seattle, Wash.*

November 19, 1979.

Dear Mr. Danberg: Having deliberated over the contents of your 10/12/79 "Lease Cancellation" letter concerning my operation of Union Oil Station #6381, I wish to respond in kind. It is not my intention to "deliver the station to Union" as is suggested under the prevailing circumstances. Bear with me while I undertake to present the facts surrounding my acquisition and operation on 8/22/78 and perhaps at the conclusion I can suggest a suitable solution to our apparent disagreement over the present terms of lease renewal. Be assured I am anxious to continue profitably operating this station.

Fact 1: Union Oil representative Bob Knoll came to me in July 1978 and asked if I would operate Station #6381 in addition to my other Station #1066. I had expressed my desires to operate several Union stations to Bob Knoll prior to this time.

Fact 2: I agreed to operate the station at a low rental factor because the last three dealers had experienced many problems, both financial and operations. The station had been closed and looked abandoned for several months. It was agreed that Union would install new self serve remote operated pumps so the station could be operated totally self serve.

Fact 3: I agreed to pay a rental of $100.00 per month and was shown a sheet of rental schedules that indicated that the highest the rental could go up was $750.00 per month. Provisions were written into the lease that I could only operate the station as a self serve.

Fact 4: In my first meeting with you at the Terry Avenue Freight House in November 1978 we discussed the merits of owning more than one station. I informed you of my plans of operating six to ten stations in the Seattle area. I told you that I wanted all of these stations to be under the Union 76 brand. You told me at that time, "You are not going to get any more Union Stations, we are not going to let a dealer get big enough that he starts dictating company policy to us."

Fact 5: I have explained to you and many other Union Oil representatives my ambitions of having several Union stations, hauling my own gasoline, purchasing motor oil at the same price as other mass merchandisers, and instituting a training school for service station personnel. The response I get from you and other local Union officials is that it is not within company policy for a dealer to get that big.

Fact 6: At our luncheon meeting in August 1979, you stated that Union wanted me to convert #6381 to full service. When I asked why I should convert to full service? You stated that Union Oil is full serve oriented! If there is any truth to that statement I cannot understand why Union Oil company has opened four "Company" owned and operated self serve stations in the Puget Sound area in the last year. These "Company" stations received much larger allocations than the average dealer units.

Fact 7: I informed you and my dealer representative about the rents being paid by my competitors. The Shell station at 90th and Lake City Way N.E., ten blocks away, pays about $600.00 per month. The other station at 75th and Roosevelt pays about $800.00 per month. Both stations are more modern, larger facilities, and have the options of operating either full serve and or self serve.

Fact 8: There has been no explanation to me as to why the rental factor is higher for self serve than full serve. Historically self serve units rent for about one half that of a full serve unit.

Fact 9: Based on assessment records at the King County Court House, the rental factor offered me is excessively high as compared to other dealer rentals when compared to assessed property valuations.

Fact 10: An increase in rent from $100.00 to $1,692.00 per month is excessive and inflationary. Such an increase would not comply with the standards or spirit of the President's Wage and Price Stabilization Guidelines.

Fact 11: I have had no opportunity whatsoever to input any of the terms or conditions of the lease renewal. The presentation you and other Union representatives have made is, "You either sign our lease and meet all our wishes or get out of our facility." Fair business practices dictate that lessors should be allowed an opportunity to negotiate with Union toward attaining a reasonable settlement.

As I perceive the facts, it is apparent you are attempting to put me out of business and or restrict my operation of this station to the point of marginal return. I would like to think it is not within Union company policy to do this but that the misunderstanding lies with Union representatives here in the Seattle office.

It is obvious to me that your decision to send me this termination letter relates to the fourth paragraph which reads, "As a result of our failure to agree on changes and additions in the new leases—." I do not believe the new terms and conditions are being made in good faith. The exorbitant rent increase combined with pressure to change from self serve are in fact an attempt to force me out of business at this location.

I suggest resolving our problem by any of the three alternatives:

(1) We submit the rental issue to impartial arbitration by a person or panel and both agree to their findings.

(2) Union can purchase my interest in the station for fair market value, since I am the one who built the station from a closed unit to its present high allocation.

(3) I will purchase the facility from Union Oil Company if you find the station to be financially unfeasible at a fair and competitive rent.

If this matter is not resolved by December 7, 1979 I will be forced to seek a preliminary injunction in the United States Court, as provided for in the Summary of Title 1 of the Petroleum Marketing Practices Act. I plan on staying in business at this location after January 15, 1980. You should consider this NOTICE that I will not be forced out of business at this location or any of my other Union 76 locations.

Respectfully,

JERRY A. BLANTON.

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UNION OIL CO. OF CALIFORNIA,
*Seattle, Wash., December 27, 1979.*

Re service station No. 6381, 8001—15th Avenue N.E., Seattle, Wash. 98115.

Mr. JERRY A. BLANTON,
*Seattle, Wash.*

DEAR MR. BLANTON: We have received your letter of November 19 and because of the numerous questions raised, we have had it reviewed by home office before responding.

First and perhaps most important, the rentals set forth in the self-serve document are policy rentals for the Western Region of Union's Marketing Department. In other words, the new rental policy for self-serves covers all leased stations in the Western Region which are operating as self-serves or fast serves. If you do not elect to lease the subject station from Union and it is offered to another dealer, the self-serve rental remain at $1,692.00 per month.

When the station was first leased Union was experimenting to see if the self-serve concept was viable at the subject location. Likewise, you were experimenting to see if you would make any money in this new type of operation. As we are both aware, margins for self-serve stations ranged from three to six cents per gallon. When the Department of Energy issued new pricing rules those margins jumped to 15.4¢ per gallon and effective December 15, 1979, to 16.1¢ per gallon. In addition, because Station 6381 was on the self-serve program during the new base period, it acquired a very large and valuable allocation. These facts have repeated themselves throughout the Western Region and this caused marketing management to institute a new self-serve rental policy. It is not our intent to force you or anyone out of business. Such an action would be counterproductive for all concerned. We do believe that the self-serve rent of $1,692.000 per month is reasonable, given the current conditions in the marketplace.

As you are aware, it was our belief that returning the station to full serve would benefit both you and the company to a greater extent than continuing on a self-serve operation. You strenuously objected to a change in the method of operation and we therefore offered you your choice of a full or self-serve lease. The full-serve lease was calculated using a reduced base gallonage number taking into consideration the likelihood that full serve operation would produce less gallonage. However, there is a new full serve policy effective November 1 and if this were utilized, it would generate a full serve rental in excess of the self-serve rental of $1,692.00 per month.

Your letter touches upon a number of items including arbitration, rental paid by other non-Union Oil dealers and historical precedence. It is sufficient to say that Union Oil sets its own rentals without reference to what is being charged down the street. At the same time we feel our system of calculating rentals by looking at the present value of property and market conditions is fair and equitable.

You have also made mention of your desire to acquire a number of service station units. Union cannot and will not prevent you from acquiring any number of service station units you so desire. However, we do have the right to approve new dealers for Union branded units and because our experience indicates that necessary personal supervision disppeared when one individual has more than two units, we do not normally approve a branded dealership where the individual in question already has two units.

It is our hope to avoid litigation but if we must file in order to obtain possession of Station 6381 then we will take that course of action.

If you wish to reconsider either the full serve lease or self-serve lease, please contact me direct.

Very truly yours,

L. J. DANBERG,
*Area Manager Retail.*

Union 76 Division: Western Region
Union Oil Company of California
2901 Western Avenue, Seattle, Washington 98121
Telephone: (206) 223-7600

UNION 76

March 7, 1980

Mr. Jerry A. Blanton 1-1066
102 Fairview Avenue North
Seattle, Washington 98109

Dear Jerry:

We have reviewed your letter of February 13, 1980 and understand your desire to obtain Union's position with regard to Gasohol before you proceed with any costly investments.

At the present time our corporation has not yet formulated a policy on Gasohol but it is our understanding that such a policy is now being considered by Executive Management. I can state for certain that Union will not be marketing Gasohol or Alcohol to its customers. However, it is recognized that Gasohol will be sold and some sort of policy should be forthcoming in the next 30 - 60 days.

Based on our current policy, only Union branded fuels may be sold under our trademarks. In addition, the Union credit card may not be accepted for the purchase of any other major and/or non-branded fuels.

With regard to your incorporation, as you are aware we are still processing the transfer to J & S Petroleum Services, Inc. and therefore we are still doing business with you as an individual until the transfer has been completed.

If you have any specific questions, please do not hesitate to call this office.

Very truly yours,

UNION 76 DIVISION: WESTERN REGION
UNION OIL COMPANY OF CALIFORNIA

L. J. DANBERG
Area Manager Retail

REN:sm

J. & S. Petroleum Services, Inc.,
*Seattle, Wash., March 24, 1980.*

Re Union 76 stations Nos. 6381 and 1066.

Union Oil Co. of California,
*Union 76 Division: Western Region,*
*Seattle, Wash.*
(Attention of L. J. Danberg, area manager—retail).

Dear Larry: Enclosed is a duplicate copy of a letter dated March 7, 1980, concerning station Nos. 1066 and 6381. Our Union representative, Cheryl Van Allan, has twice presented this letter to me for my signature and both times I have declined. I do not like to sign a commitment that I may not or cannot live up to.

I agree to and without hesitation will sign all the conditions as stated on the letter but for the underlined portion of condition No. 2, that states "discontinue full-time personal operation and supervision of said service station business." This section of the contract raises several questions. For instance . . . Are there in fact two contracts, each of which require my "full-time personal operation and supervision?" What constitutes full-time? What happens if I'm sick or if I die? What happens if I have jury duty or if I go on vacation? What happens if I attend a Union 76 conference or trip? What happens if a Union Oil representative feels I am not spending enough time at my stations? Does an independent businessperson have to be told how many hours per day he/she must be on a certain premise?

I maintain higher standards for my three Union 76 stations than most other dealers, including Union 76 and competitive brands. In addition, I have a station manager in each of the three locations who is responsible for their individual unit. I invite my marketing representative to constructively evaluate each operation and invite inquiries, ideas, standards, promotions and aid for them.

As an independent businessperson I chose to incorporate in order to consolidate, manage, serve and profit within the petroleum industry. You have some understanding as to my ambitions of operating several Union 76 service stations, operating a service station training school, operating a fuel alcohol production plant and operating a gasohol blending plant. These are goals that I have established for myself and for the people who work for J & S Petroleum Services, Inc. I feel these goals can be attained in the near future. We have asked Union 76 for their cooperation in attaining our goals which would not only benefit J & S Petroleum but also Union Oil Company and the community. The lack of cooperation from your office when attempting to lease or to even be considered as a potential lessee at locations such as Magnolia or 1st and Spokane is somewhat discouraging but we are presently working on alternatives.

My intentions as president of J & S Petroleum Services, Inc., are to continue to work full-time and to attain the goals and standards that my staff and I have established. If ever my standards drop below that of Union Oil Company or the norm of other Union 76 dealers, I would expect to be advised of this immediately. If need be, any of my staff will complete the dealer training program at our company expense in order to preserve our high standards.

Thank you.

Jerry A. Blanton, *President.*

Enclosure.

Union Oil Company of California

UNION

In Reply Give No.

March 7, 1980

Mr. Jerry A. Blanton
102 Fairview North
Seattle, Washington 98109

SERVICE STATION 12-1066
102 Fairview North
Seattle, Washington 98109

Dear Mr. Blanton:

You occupy the subject service station pursuant to Service Station Lease between Union Oil Company of California, as Lessor, and you as Lessee, dated May 17, 1977. Union is also selling you gasoline under Retail Dealer Gasoline Purchase Contract also dated May 17, 1977. You have requested that Union approve the transfer of the service station business from you as an individual to J & S Petroleum Services, Inc., a Washington corporation, in which you are the principal stockholder.

Union is agreeable to such transfer upon the following terms and conditions:

1. You agree by signing the Irrevocable Guaranty attached hereto that you shall be responsible for and guarantee the payment of any indebtedness to Union from said corporation however arising, and will upon demand from Union pay any and all amounts owing and due from said corporation to Union.
2. At Union's option, service station lease and gasoline supply contract entered into between Union and said Corporation may be cancelled upon not less than 90 days' written notice, in the event you cease to own more than fifty-one per cent (51%) of the stock of said corporation, or discontinue full-time personal operation and supervision of said service station business.

If the foregoing conditions meet with your understanding and approval, please sign and return the duplicate copy of this letter together with original copy of the Irrevocable Guaranty.

Very truly yours,

UNION OIL COMPANY OF CALIFORNIA

By____________________
Area Manager Retail

Agreed:

______________, 19____.

____________________
Jerry A. Blanton

Union 76 Division: Western Region

Union Oil Company of California
2901 Western Avenue, Seattle, Washington 98121
Telephone (206) 223-7646

**UNION**

Richard N. Owings
Division Sales Manager

RECEIVED APR 01 1980

March 31, 1980

Mr. Jerry A. Blanton
102 Fairview Avenue North
Seattle, Washington 98109

Dear Jerry:

This will acknowledge receipt of your letter of March 27th, 1980, wherein you formalize your desire to expand your present operation to facilitate a service station training facility in the Seattle area.

As I have indicated to you before, you are to be commended for your desire to provide training for some of Seattle's disadvantaged with the underlying objective of making productive citizens out of them.

In response to your inquiry regarding Union's policy on multiple operations, I must advise you we have no definitive policy other than my prerogatives and responsibilities as Division Manager based on my experience in multiple operations, and in consideration of the complexities of supervising service station operation in today's environment I must tell you that I have no intention of being supportive to an expansion of your service station base. Both units that you referenced are currently under lease and neither dealer has indicated any desire to leave.

As you are probably aware, when a particular service station lease is available, it is our job to select the best qualified candidate that is available at that time. Certainly you have a right to apply for any specific station that you desire, and it is then our responsibility to consider your application in comparison to any others that have an interest in the business.

Thank you for providing Union Oil with an opportunity to participate in your plan for a training center. We wish you good luck, and I am sure that the needed elements of success are available to you with or without our involvement.

Very truly yours,

R.N. Owings

RNO:pj
cc: Paul C. Dennis, Seattle
J. P. Johnson, Los Angeles
L. J. Danberg, Seattle

J & S Petroleum Services, Inc.
102 Fairview Ave North
Seattle, Wa., 98109
March 27, 1980.

Richard N. Owings
Division Sales Manager
Union Oil Company of California
Union 76 Division - Western Region
2901 Western Avenue
Seattle, Wa., 98121

Re: Service Station Training Center

Dear Dick:

I want to thank you for your interest and attention with regards to my ideas for a service station training facility in the Seattle area. As you know, Joe Johnson, Coordinator of Minority and Urban Affairs for Union Oil Company, contacted me in December, 1979. He was very encouraging during our discussion about the possibilities and merits of such a program.

I would like to solicit your help in acquiring a facility within which such a training program could be operated. As I have said before, the near perfect station for a training center would be the one at 17th and East Madison. Also a possible site would be the station at Broadway and Madison. I have approached both lessees, Don Hansen and Jim Davis respectively, about purchasing one of their existing businesses.

This raises some question about Union's company policy on multiple locations. In addition to my involvement in a station training facility, I would like to expand my present three Union stations to five or six. Economies of scale can be reached only through multiple locations such as purchasing ability, improved employee training and skills, increased managerial procedures, allocations and of course, better customer services. As a small businessman my motivation and incentive are basically similar to that of any large corporation, perhaps even Union Oil Company. . . better service for the motoring public, better service for the community and better profits for my company.

Thank you again for putting me in contact with Joe Johnson. My sincere hope is to soon see a service station training center for employees in the Seattle area. Your assistance, Dick, will be very much appreciated in helping me locate a service station that could be converted to a training center.

Very truly yours,
J & S PETROLEUM SERVICES, INC.

Jerry A. Blanton
President

JB:pn

J & S Petroleum Services, Inc.
102 Fairview Ave North
Seattle, Wa., 98109
May 21, 1980.

Union Oil Company of California
Union 76 Division: Western Region
2901 Western Avenue
Seattle, Wa., 98121

Attn: Larry J. Danberg
Area Manager Retail

Re: Station nos. 1066 & 6381 - Leases

Dear Larry:

After receiving and reviewing the lease renewals for stations #1066 and #6381 on May 15th, delivered by yourself and Mike Johnson, a few questions in my mind remain unanswered. Hopefully you can answer or clarify these for me.

The major question that I have is how can the rent for #1066 go from an annual rate of $16,463., from May 1979 to April 1980, up to a rate of $26,180., from May 1980 to April 1981, and thereafter with an annual increase of $4,800., in addition to the G.N.P. Deflator Index increase which is a projected 8% per annum. These increases would amount to 59% the first year, 18% the second year and 15½% the third year, plus the G.N.P. Deflator Index. This seems to be a very hefty rise and I do not understand why. If these are in fact correct figures, I would like to inquire as to not only how these figures were arrived at but also as to how the station is classified in arriving at these figures. With these increased rents we could not raise prices enough to reflect the added costs and stay within the guidelines of the Wage and Price Stability Council.

Another concern is Section 4, paragraph M of the "terms and conditions" of the lease stating that the "dealer will be physically present on the station premises for a minimum of four hours per day and a minimum of five days per week." Does this mean any officer of the corporation, station manager, or me personally, as president of the corporation? I believe I had brought this subject up once before in my letter to you of March 24th, 1980, but that it was not resolved.

Section 5, paragraph (a), raises the question of storing used tires. As I believe you are aware we buy and sell both used and new tires as a part of our normal business operation. The used tires represents approximately $3,000., in sales per month at #1066. They are cleaned, tagged and placed in racks and are merchandised as our new tires are merchandised.

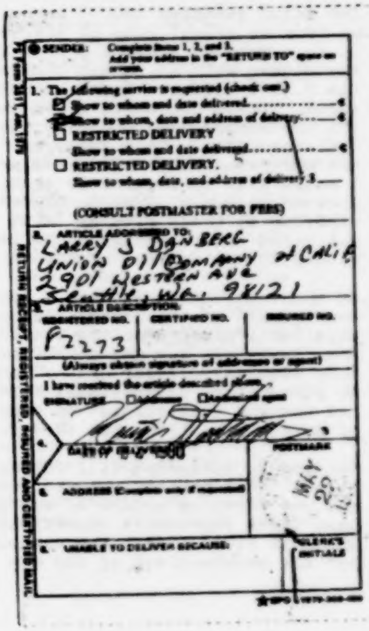
Returning to the subject of the rent increase, does it in fact reflect the possibility of gasoline allocation, station remodeling, addition of equipment, lube bays or office space. It would make sense to me that there be a provision to adjust rent down if we are put on reduced allocation. Is there such a provision already?

These are immediate concerns that I have after briefly reviewing the new lease package. I will certainly appreciate your reply as soon as possible. This is not either a rejection nor an acceptance of your offer. These are just questions that I would like to have answered.

Very truly yours,
J & S PETROLEUM SERVICES, INC.

Jerry A. Blanton
President

JB: pn



PS Form 3811, Jan. 1979

● SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)
☑ Show to whom and date delivered. .......... ¢
☐ Show to whom, date and address of delivery. .... ¢
☐ RESTRICTED DELIVERY
Show to whom and date delivered. .......... ¢
☐ RESTRICTED DELIVERY.
Show to whom, date, and address of delivery $____
(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
LARRY J DANBERG
UNION OIL COMPANY of CALIF
2901 WESTERN AVE
Seattle, WA. 98121

3. ARTICLE DESCRIPTION:

| REGISTERED NO. | CERTIFIED NO. | INSURED NO. |
|---|---|---|
| P2273 | | |

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

4. DATE OF DELIVERY [illegible]

POSTMARK
MAY 22

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

J & S Petroleum Services Inc.
102 Fairview Ave North
Seattle,Wa., 98109
May 22, 1980.

Union Oil Company of California
Union 76 Division: Western Region
2901 Western Avenue
Seattle, Wa., 98121

Attn: Larry J. Danberg
Area Manager Retail

Re: Confirmation of telegram sent
May 19/80 - gas deliveries

Dear Larry:

Per our phone conversation on May 12th,1980, I explained the problem that Station #1066 had in receiving late gasoline deliveries. We were out of unleaded 15 hours on May 11th and 12th. Due to another late delivery, again we ran out of gas on the morning of May 19th. Our operating cost at this station was $34.29 per hour as of March 31st, 1980. Consider this a bill for 16 hours of downtime for nondelivery of product, totalling $548.64. If Union Oil cannot supply our stations with timely gas deliveries, please allow us to haul our own products.

Very truly yours,
J & S PETROLEUM SERVICES, INC.

Jerry A. Blanton
President

for Jerry A. Blanton
(Pearl Nickolson)

JB:pn

J&S Petroleum Services, Inc.
102 Fairview Ave. North
Seattle, Washington 98109

May 27, 1980

Union Oil Company of California
Union 76 Division: Western Region
2901 Western Avenue
Seattle, Washington 98121

ATTN: Larry J. Danberg
Area Manager Retail

RE: Conduct and Ineptitude of Cheryl Van Allen, Retail Representative.

Dear Larry:

Today I received a phone call from Cheryl inquiring about me signing the lease at Fairview & Denny and Lake City. Also she inquired about me signing the new contract for the lock-box and new credit instructions. I informed her that I did not intend to sign the lock-box agreement and change in credit instructions. She informed me that if I did not sign this agreement by June 1, 1980, that Union 76 would discontinue deliveries of gasoline to our stations. This is the second time that she has threatened action or inaction if I did not sign a contract that she wanted signed. I informed her today that I wanted a letter stating her threat on paper. She called later and informed me she would not put it in writing but that I had better sign the contract or I would not get gasoline deliveries next week.

Because of these threats by Cheryl I will request that she never come on premisis of any of our stations again. I will not tolorate these coercive type actions by Cheryl or any other Union Representative.

In our phone conversation a few weeks ago I informed and questioned you on Cheryl's abilities, knowledge, understanding, and preformance as relates to the petroleum industry. Her calls at my stations as a Sales Representative and Retail Representative clearly demonstrate to me that she cannot preform her job to my satisfaction.

Thank you,

J&S PETROLEUM SERVICES INC.

Jerry A. Blanton
President

JAB:cm

Union 76 Division: Western Region

Union Oil Company of California
2901 Western Avenue, Seattle, Washington 98121
Telephone (206) 223-7573

L. J. Danberg
Area Manager Retail
Western Washington

May 27, 1980

5/29/80

Mr. Jerry Blanton
President
J & S Services, Inc.
102 Fairview North
Seattle, Washington 98109

Dear Mr. Blanton:

I do wish you were not so fascinated with letter writing. It must take a tremendous amount of your time as I know it does mine to respond to subject letters; whether the content is deserving of a response or not. You may consider this letter to be my final response to: (a) your phone call of May 12, 1980; (b) your Western Union Telegraph received on May 19, 1980; and (c) your confirmation of subject telegram sent on May 22, 1980.

I have researched both cases in which you maintain you received late delivery. In short, both orders were placed on Friday for delivery on the following Monday A.M. In each case, one of your employees called the terminal on Sunday and requested that the load be moved up to Sunday in an attempt to avoid running out of gasoline. Deliveries were subsequently made on the originally requested Mondays, as the dispatch sheet had already been released for Sunday.

It would appear that in an attempt to have loads delivered after 12:01 A.M. on Sunday, for whatever advantage you may see as relates to your current weekly pay program, you have allowed your inventory to run too low and as a result run out of gasoline. The Lock Box Program should remedy this problem for you.

In any case, you may consider this letter to be a denial of any claim you may wish to make, as regards the two times you ran out of gasoline.

Very truly yours,

L J Danberg

LJD:df

J&S Petroleum Services, Inc.
102 Fairview North
Seattle, Washington 98109

June 2, 1980

Richard N. Owings
Division Sales Manager
Union Oil Co. of California
Union 76 Division - Western Region
2901 Western Avenue
Seattle, Washington 98121

Dear Dick:

On Friday, May 30, 1980, the terminal at Edmonds refused to accept orders for gasoline at all our stations, 1066, 6381 and 8035. Dave read me a statement that said "Union will not accept any order for products and will not deliver products after June 1, 1980 because you have not signed the lock box agreement".

I went to the Seattle Office of D.O.E. and there were several phone conversations between D.O.E. Officials, Tom Kispe, Chuck Young and Union Officials Bill Reed and Mr. Torkelson. D.O.E. Officials told the Union officials they were in apparent violation of D.O.E. regulations in the attempt to change credit terms. The gasoline orders were released on demand of the D.O.E.

Upon my limited investigation I discovered that Union had changed the credit terms for my class of trade that were in existence on May 15, 1973 at 1066 the terms on that date were meter settlement with payment once a week.

I have no idea what terms existed at 8035 and 6381 on May 15, 1973 but I would assume they were also on meter settlement with once a week pay.

If these facts are true Union is clearly in violation of the D.O.E. regulations.

Hopefully this is just an oversight on Union's part and not a willfull attempt to circumvent the D.O.E. regulations.

I will expect to be placed on meter settlement within three days of receipt of this letter if, in fact, our three station locations were on this type of credit terms on May 15, 1973.

Very truly yours,

Jerry Blanton

Jerry [illegible]. Blanton
President
J&S Petroleum

## EXHIBIT 3: LETTER SUBMITTED BY UNION OIL CO. RE: BLANTON CASE

Union 76 Division

Union Oil Company of California
Union Oil Center, Box 7600, Los Angeles, Calif. 90051
Telephone (213) 486-6719

UNION

Joseph Byrne
[illegible]
[illegible]
[illegible]

June 12, 1980

Mr. B. W. Bedell, Chairman
Subcommittee on Anti-Trust & Restraint
  of Foreign Trade Activities
  Affecting Small Business
Room 2361, Rayburn Building
U. S. House of Representatives
Independence & South Capitol, S. W.
Washington, D. C. 20515

Dear Chairman Bedell:

At the hearing held before the House Interstate and Foreign Commerce Subcommittee on June 5, on HR-6722 (The Small Business Motor Fuel Marketer Preservation Act), statements were made by Anthony E. White, Assistant to the Division Chief of the Office of the Attorney General, State of Washington. These statements addressed the general aspects of the bill but made certain allegations of the conduct of the Union Oil Company of California, and the purpose of this letter is to refute and clarify some of the statements made by Mr. White.

On page 3 Mr. White states that Union Oil is in the process of substantially changing the credit provisions of their contracts with dealers in the Washington area. He states that it is a highly unfavorable change, beginning almost immediately. It is stated that Union dealers previously had been allowed to pay for a week's tankwagon purchase of gasoline by noon the following Monday, but that now we are forcing a dealer to place the payment in the lockbox affixed at the station before additional gasoline deliveries will be made.

It is true that Union Oil is installing lockboxes at its service stations and asking dealers to deposit their credit card transmittals in that box before the next delivery will be made. This is not a change in credit terms but a change in procedure. The present procedure is that the dealer lists his credit cards on a transmittal form and mails one copy to the terminal and the second copy of the transmittal form with his credit card tickets to our Credit Card Center in San Francisco. The terminal must receive the transmittal form before an additional load can be dispatched. The dealer pays the postage. With a lockbox, for which we charge $14 per month, he must have the cards available and the transmittal in the box when the delivery is scheduled. The dealer actually can wait and accrue more tickets because he is not subject to the mail delay for the transmittal form to reach the terminal. He typically saves about $25 a month in postage. This is not a change in credit terms.

Mr. White's remarks that previously "Union dealers were allowed to pay for a week's tank wagon purchase of gasoline by noon on the following Monday" apparently refers to the meter plan some dealers have in which each Monday they must report the metered volume of gasoline withdrawn from the tanks and have payment for that gasoline in our hands by Wednesday. About 13% of the dealers are on this plan and the other 87% are on a purchase basis. The dealers on a purchase basis buy and transport quantities and generally have one-load terms, so that they must pay for the load they received before they can get an additional load. Not all dealers have the same credit terms because it was our customary business practice in 1973 to assess credit terms according to the credit worthiness of the customer. We still do this.

On page 5 of Mr. White's testimony the statement is made that Union Oil relies on Shell Oil for aviation gasoline 80-grade and makes only 100 octane themselves. This is incorrect since Union Oil manufactures both grades 80 and 100 aviation gasoline. We add further that we believe Union is one of the few oil companies that continue to make both grades. We continue to supply aviation gasoline to our customers and our production has expanded in recent years.

The above paragraphs should clarify the statements made about Union Oil Company. We say in a general way that dealers are today in a healthy business environment, they are making a good return on their investments, they receive benefits from being affiliated with a major oil company, and they are protected by the Fair Marketing Practices Act and many state "Dealer Day in Court" bills. We believe there is competition at the retail level and that it is vigorous. We see no need for further legislation until the recently passed legislation has been further tested.

If you have any questions about my letter, please transmit them to me.

Very truly yours,

UNION OIL COMPANY OF CALIFORNIA

Joseph Byrne

JOSEPH BYRNE
Sr. Vice President
76 Division

JB:hd
cc: E. W. Cole, Washington, D. C.

## Appendix I.—Additional material submitted by Jack W. Houston, Acting Executive Director, Service Station Dealers of America, Inc.

**Service Station Dealers of America, Inc.**
Formerly
National Congress
of Petroleum Retailers

**Acting Executive Director**
Jack W. Houston

**Officers**
Joseph J. Groh
President
Mt. Clemens, MI

John Dickson
Second Vice President
Palm Desert, CA

William J. Brooks
Third Vice President
Washington, DC

William T. Demler
Treasurer
Villanova, PA

Charles R. Mattes
Director
West Hartford, CT

Lewis A. Haskell
Director
Arlington, VA

May 29, 1980

The Honorable Berkley Bedell, M.C.
Chairman
Subcommittee on Antitrust and
Restraint of Trade Activities
House Small Business Committee
Rayburn House Office Building, Room B-363
Washington, D.C. 20515

Dear Mr. Bedell:

In my testimony before your Subcommittee on Antitrust and Restraint of Trace Activities on May 21, I mentioned, but not in detail, how refiners were moving aggressively to integrate into retailing, as is in the case in Atlanta, Ga.

Greater detail of what I mentioned is enclosed and if you wish to make it a part of the record of your hearings on HR6722, please do so.

Respectfully,

Jack W. Houston
Acting Executive Director

EXECUTIVE OFFICE • SUITE 303 • 2021 K STREET, N.W. • WASHINGTON, D.C. 20006 • 202/293-6868

**Service Station Dealers of America, Inc.**

Formerly
National Congress
of Petroleum Retailers

**Acting Executive Director**
Jack W. Houston

**Officers**
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Mt. Clemens, MI

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Washington, D.C.

William T. Damian
Treasurer
Villanova, PA

Charles R. Mattias
Director
West Hartford, CT

Lewis A. Haskell
Director
Arlington, VA

An example of a refiner moving aggressively to integrate into retailing has just recently been discovered in the metropolitan Atlanta, GA market.

Recently, Texaco invited certain of its better dealers to a company meeting to explain an expansion program. They were advised that _if_ dealers could be found the new outlets would be dealer operated. The fact is that the pure economics of what Texaco is about to do provides a reasonable assumption that Texaco will be employee-operating the new outlets.

The Texaco internal document (See Attachment I) status report dated February 12, 1980 reveals an eighteen million dollar expansion and renovation project for the metro Atlanta area. It's initial phase shows that more than half of it will be expended to build 18 new huge pumper stations. If you examine page two of the document the projected volumes for 12 locations, you will find when you compare the investment costs to the volume projections that, for example, items #1 and #2 will require an excessive per gallon rental passthrough amount _if_ Texaco is to

EXECUTIVE OFFICE • SUITE 303 • 2021 K STREET, N.W. • WASHINGTON, D.C. 20006 • 202/293-6866

realize a reasonable return on its investment. Based on a 15% return on investment it will amount to 5.9 cents a gallon.

Whether xaco operates the retail outlets willingly or unwillingly will make little difference to those who must compete with the subsidized outlets. Either way, the dealer will not be able to compete and ultimately to economically survive.

The prospects of unlimited profit at retail after Texaco has temporarily met the low price of Gulf company stores, and other majors are forced to change their dealer operations to company stores to meet the lower pricing just to retain their market share, and dealers and competition no longer exist in the retailing of gasoline, can not be ignored.

5/80

ATTACHMENT 1
Page 1

### METRO ATLANTA R.O.I. PLAN
### STATUS 2/12/80
### INITIAL PHASE

| | LOCATION (BY PRIORITY) | | MPSI VOLUME PROJECTION | ALLOCATIONS STATUS | TOTAL COST LAND & FACILITIES | |
|---|---|---|---|---|---|---|
| 1. | Northside Dr. & I-285 | (NEW) | 150,000 | 105,000 Approved | $712,453 (Fac. Only) | Approved |
| 2. | Holcomb Br. & Ga. 400 | (NEW) | 110,000 | 200,000 Approved | 387,760 (Fac. Only) | Approved |
| 3. | Peachtree Ind. & I-285 | (NEW) | 144,000 | Submitted 11/7/79 (200,000) | 563,924 (Fac. Only) | Approved |
| 4. | U.S. 29 & Arcado | (NEW) | 115,000 | 175,000 Approved | 308,982 (Fac. Only) | Approved |
| 5. | Camp Creek Pkwy. & I-285 | (R&R) | 132,000 | Submitted 11/14/79 (250,000) | 435,794 | Approved |
| | Riverdale & I-285 | (R&R) | 120,000 | Will submit 5/1/80 | 545,042 | Approved |
| 7. | Windy Hill & I-75 | (NEW) | 139,000 | Submitted 11/20/79 (300,000) | 751,410 | ~~Submitted~~ Approv |
| | Bankhead Hwy. & I-285 | (R&R) | 183,000 | Submitted 12/7/79 (300,000) | 498,679 | ~~Submitted~~ Approv |
| 9. | 5476 Jimmy Carter Blvd. | (NEW) | 159,000 | Submitted 12/17/79 (300,000) | 568,333 | ~~Submitted~~ Approv |
| 10. | Holcomb Br. & Spalding Dr. | (NEW) | 117,000 | Submitted 1/7/80 (300,000) | 600,000 | ~~Option taken~~ Submit |
| 11. | Brannon Sq. (U.S. 19) | (NEW) | 160,000 | Submitted 12/17/79 (200,000) | 575,000 | Op~~tion taken~~ Subm |
| 12. | Crabapple & Crossville | (NEW) | 127,100 | Submitted 1/14/80 | 600,000 | Option taken |

THE ABOVE REPRESENTS LOCATIONS WHICH WE HAVE APPROVED OR UNDER OPTION AT THE PRESENT TIME. WE HAVE OPTION OFFERS OUT ON FOUR ADDITIONAL PROPERTIES AND NEGOTIATIONS IN THE FINAL PHASE ON THREE PROPERTIES FOR A TOTAL OF 19 NEW LOCATIONS.

↑
(SECTION RETYPED)

ATTACHMENT I
Page 2

MFTRO ATLANTA R.O.I. PLAN

STATUS - FEBRUARY 12, 1980

VOLUME

| | | | |
|---|---|---|---|
| Initial Phase: | 3 Raze & Rebuild | 435,000 | Gals./Mo. |
| | 15 New | 2,133,297 | Gals./Mo. |
| | 1 Renovation | 104,642 | Gals./Mo. |
| Remaining: | 17 Raze & Rebuild | 2,831,998 | Gals./Mo. |
| | 15 As Is (13 Renovations) | 804,020 | Gals./Mo. |
| | 51 Stations | 6,308,957<br>(123,705 | <br>Avg. Gals./Mo.) |
| | Plus 50 Wholesaler Stations Average 29,000 Gals./Mo. | 1,450,000 | Gals./Mo. |
| | Grand Total Texaco Volume | 7,758,957 | Gals./Mo. |
| | Annually | x 12 | |
| | | 93,107,434 | Gals./Yr. |

TOTAL MARKET - 1,212 Stations averaging
68,297 = 82,775,964 Gals./Mo.
or 993,311,560 Gals./Yr.

| | | |
|---|---|---|
| Result: | Texaco Share of Market | 9.4% |
| | Texaco Share of Stations | 8.3% |
| | Texaco Effectiveness | 1.13 |

COST

| | | | |
|---|---|---|---|
| Initial Phase: | 18 (3 Raze & Rebuild + 15 New) | $9,947,377 | |
| | 1 Renovation | 128,344 | |
| | | 10,075,721 | Sub-Total |
| Remaining: | 17 Raze & Rebuild | 8,286,780 | |
| | 13 Renovations out of 15 as is | 508,815 | |
| | | 8,795,595 | Sub-Total |
| | | $18,871,306 | Est. Total Cos to Complet Project |

| | | |
|---|---|---|
| ORIGINAL | 62 | STATIONS |
| DIVEST | -28 | STATIONS |
| ADD 2 FROM SURPLUS | +2 | STATIONS |
| ADD 15 NEW | +15 | STATIONS |
| | 51 | STATIONS |

## APPENDIX J.—STATEMENT OF DR. PHILLIP SORENSEN, PROFESSOR OF ECONOMICS, FLORIDA STATE UNIVERSITY, SUBMITTED BY HON. JOSEPH M. MCDADE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

JOSEPH M. McDADE
10th District, Pennsylvania

COMMITTEES:
APPROPRIATIONS
SMALL BUSINESS

Congress of the United States
House of Representatives
Washington, D.C. 20515

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9 June 1980

Honorable Berkey Bedell
U.S. House of Representatives
Washington, D.C. 20515

Dear Berkley:

Thank you for your assistance in scheduling Dr. Edward Mitchell to participate in the hearings on the Small Business Motor Fuel Marketer Preservation Act. As you will recall, I originally requested that Dr. Philip E. Sorensen and Dr. Edward Mitchell testify before the Committee. However, due to the full schedule we mutually agreed to invite Dr. Mitchell. At this time, I am enclosing a copy of a statement from Dr. Sorensen, which I am requesting be made part of the hearing record on your Gasoline Marketing legislation, so all Members will have the benefit of his views.

I very much appreciate your cooperation and I want to commend you on your diligent efforts on this subject.

Sincerely,

Joseph M. McDade, M.C.
Ranking Minority Member
Committee on Small Business

JMM:ep
enclosure

PLEASE RESPOND TO: WASHINGTON OFFICE ☐ SCRANTON OFFICE ☐

Statement of Dr. Philip E. Sorensen

Professor of Economics
Florida State University
Tallahassee, Florida

Before the

Subcommittee on Antitrust and Restraint of Trade
Small Business Committee

and the

Subcommittee on Consumer Protection and Finance
Commerce Committee

U.S. House of Representatives

on

H.R. 6722

June 4, 1980

## Statement of Dr. Philip E. Sorensen
## on H.R. 6722

### INTRODUCTION

H.R. 6722 would legislatively restructure the gasoline distribution and marketing system in the U.S. by

a. prohibiting large and medium-sized refiners from directly operating any facility which sells gasoline or other motor fuels at retail;

b. placing volume and pricing restrictions on "independent" and "small" refiners who operate their own retail outlets;

c. creating a single basic price (or "rack price") for all gasoline sold by any refiner; and

d. giving existing dealers a "right of first refusal" to purchase the service station properties they lease which are proposed for sale by refiners, with the sale price of these properties being fixed by an appraisal whenever the buyer and seller fail to agree on a price.

In addition, H.R. 6722 would enlarge the existing right of a branded dealer to obtain motor fuel from an outside supplier and to lawfully sell such fuel at the branded station so long as the dealer provided "reasonable notice at the point of sale" that such fuel was not supplied by the refiner whose brand is displayed at the station.

The gasoline market in the U.S. is in the middle of one of the most complex and painful periods of readjustment which has ever been faced by any American industry. All participants in this market--dealers, jobbers,private brand marketers, refiners, and consumers--are facing wrenching increases in costs and uncertainties in supplies of products. At the same time, federal price and allocation regulations have put all gasoline distribution and marketing relationships into a bureaucratic straitjacket. The distortions and inequities created by these government regulations have grown to such an extent that the regulations themselves are presently the basis for a host of unfair and anticompetitive restraints in the marketplace.

The frustrations and uncertainties of the present situation have created a climate of fear and suspicion concerning the objectives and motivations of the various participants in the marketplace, in particular the motivations of the major refiners. Using the present unstable environment of the gasoline market as a pretext for government intervention, the proponents of H.R. 6722 have advanced this bill in language suggesting that an immediate and serious crisis exists in gasoline marketing in the U.S. and that disaster can only be averted if immediate and extraordinary legislative remedies are invoked.

I do not question the sincerity of the concerns expressed by those who have proposed H.R. 6722 but I would urge that Congress move with great caution in dealing with these concerns. There is not a sufficient factual basis for the enactment of this bill. Changes in government price and allocation regulations which will occur over the next 16 months will eliminate many of the most serious anticompetitive distortions which have been troubling the industry in recent years. In short, this is a time for patience and deliberation.

If H.R. 6722 were to be passed into law in its present form, competition in gasoline marketing would be stifled, retail gasoline prices would increase, and the federal government would be thrust even more deeply into complicated and unnecessary forms of economic regulation. Ironically, the group whose interests this bill was intended to promote--the major brand lessee dealers--would not be protected by H.R. 6722. The bill would not affect the ability of jobbers and private brand chain marketers to expand their share of the gasoline market through cut-rate, high volume "pumper" stations. It would, however, severely impair the ability and incentive of the major refiners to maintain their existing networks of high quality, branded service stations. Major refiners' investments in these types of service stations would surely decline as a result of H.R. 6722. The biggest losers in this transition away from branded gasoline marketing would be the individual lessee dealers and the approximately 50 percent of all consumers who prefer to buy gasoline and related products from a full service, major brand station.

In the sections which follow, a summary analysis of the major sections of H.R. 6722 will be provided. Then an attempt will be made to explain the competitive environment of gasoline marketing in the U.S., to discuss the reasons for the decline in the number of service stations since 1972 and the concomitant trends in the number of refiner-operated stations, and to shed some light on the issues of subsidization or predatory pricing by refiners. Finally, the effects of government allocation and pricing regulations will be discussed.

## I. SUMMARY ECONOMIC ANALYSIS OF H.R. 6722

Section 3(a)(1) of this bill would make it unlawful for any refiner, other than an "independent" or a "small" refiner,[1] to operate any motor fuel service station in the United States. The underlying premise for this section is that the system of dual distribution of gasoline by medium and large refiners through their own stations and simultaneously through dealer-operated stations is unfair or anticompetitive. This argument will be evaluated in Part II of this paper, below.

Section 3(b)(1) would make it unlawful for independent and small refiners to increase the ratio of gasoline sales made through their company-operated stations in any state above the ratio recorded in that state in 1978. This section further provides for an absolute limit on company-direct sales. The most recent version of this section provides that if the volume of gasoline sales in any state rises above the 1978 volume, the proportion of the increased volume which can lawfully be sold through company-operated stations may not exceed the lesser of (a) the 1978 sales ratio in that state, or (b) one-half of the increased volume.

---

[1] An "independent" refiner is defined as one which produced less than 30% of its crude oil needs in 1978. A "small" refiner is one whose total refinery capacity does not exceed 175,000 barrels per day.

These sales ratio and growth restrictions would severely impair the ability of small and independent refiners to compete in the marketplace, to adjust to inevitable shifts in the demand for gasoline which will extend disproportionately across state lines, and to react to unanticipated changes in the volume of sales by these refiners to other wholesale buyers. The growth in market share of these refiners since 1972 reflects their ability to appeal to the most price-conscious consumers--that is, to achieve substantial economies in marketing through high volume "pumper" stations and then to pass these savings on to consumers at self-service, discount-price outlets. Freezing these refiners' sales ratios in each state at their 1978 levels would introduce extreme rigidities in the marketplace. The loss of a single, large wholesale customer in any state could force a refiner to arbitrarily limit sales of gasoline in that state through its existing refiner-operated stations. Since there might be no possible "safety valve" through which this gasoline could flow, the refiner might have to reduce refinery runs or otherwise invoke costly interruptions in its crude oil supply. A refiner with a small toehold in a certain state market would be precluded from expanding its share of that market through direct marketing unless it could find sufficient wholesale customers for its gasoline to keep its sales ratio from falling into the unlawful range. Since the refiner would be limited in the amount of gasoline it could sell in many states, its pricing aggressiveness would be similarly limited. A decline in refiner-direct sales in one state could not be offset against a growth in a neighboring state since the refiner would be legally bound to observe the arbitrary ratios in each state achieved in 1978. Entry of these refiners into new markets would be severely restricted or even precluded. Thus, in total, the effects of these sales ratio and growth restrictions upon small and independent refiners could be catastrophic. Elimination of their aggressive price competition from the marketplace would mean higher prices for consumers.

Section 3(c)(1) would make it unlawful for any refiner to sell motor fuel at any "point of transfer" at differing prices to purchasers of the same basic units of volume. Small and independent refiners (the only refiners who would be permitted to market gasoline directly under H.R. 6722) would be considered to have violated this provision if they sold gasoline at their own stations at prices "below the prices at which, if the refiner had purchased the motor fuel at the point of transfer at the price then in effect, the refiner would have had to sell such motor fuel at such stations in order to obtain the same profits on the sale." Although all refiners would be required to sell gasoline at the same "rack price" to all buyers of the same quantity, they would be permitted to charge a "uniform and reasonable surcharge" for the use by the buyer of a trademark or a brand name and any services associated with the trademark [Section 3(c)(2)].

The economic implications of these provisions are much more difficult to understand than those considered earlier. I believe, however, that these "rack pricing" provisions of H.R. 6722 contain the seeds of the destruction of major brand marketing of gasoline in the U.S. as we know it today. And since the particular market advantages which the majority of independent service station dealers have over their competitors are uniquely related to the strength of the brand names they display at their stations, any reduction in the scope or effectiveness of major brand marketing must inevitably reduce the ability of dealers to succeed in the marketplace.

It is reasonable to assume that the term "point of transfer" would be interpreted to mean that point at which motor fuel is first sold by a refiner for distribution in a particular area--either the refinery gate or a major terminal facility. At this point, it must also be assumed that any customer--

a dealer, a jobber, or a commercial customer--could insist on buying the product unbranded. While the refiner would still be able to charge a "uniform and reasonable" surcharge to a buyer for the use of the brand name and its related services, it must be expected that many buyers would not choose to pay for these services. As fewer buyers chose to pay the surcharge, the ability of refiners to maintain the critical mass of branded stations within each marketing area which is necessary to the economic success of the brand would be eroded. Ultimately, most if not all major refiners would be forced to reduce their investments in major brand marketing and consumers would lose the advantages associated with those brands: the research which has produced high quality motor fuels, the assurance that the company's credit card will be honored, the training and guidance which is given to dealers, the implied guarantee of quality for products and services sold at a branded station which will be backed up by the refiner's home office--in short, the whole package of consumer services which is available at major brand stations but which cannot be found with assurance at non-branded stations.

Rack pricing would put the major brand refiners in a difficult or impossible position to defend branded marketing. We must assume that their contracts with dealers could not compel dealers to accept the "uniform and reasonable" surcharge for use of the brand name. Such contracts would clearly undercut the stated intention of H.R. 6722. Thus refiners could not be certain that the minimum required number of their stations would be operated as branded stations nor could they be sure that any station would retain its branded identity in the future. Refiners would be forced either to hold a much larger inventory of stations for lease (in order to assure that enough stations would be accepted on a branded basis to maintain the commercial viability of the brand) or they would have to attempt to buy into the market each time the number of branded stations dropped below the critical level. This would impose very large additional costs and risks on refiners. As stations shifted from branded to non-branded marketing, consumer expectations in reliance upon the brand would be shattered further reducing the value of the brand identification. These factors would lead refiners to reduce their investments in branded marketing leaving branded dealers exposed to erosion of their market shares by competitors who have traditionally offered lower prices. Consumers who have relied upon branded service stations would also be losers since they could no longer depend upon a brand name to give them an assured standard of quality in products and services. As the range of consumer choices in the marketplace would narrow, consumer welfare would be reduced.

Two final observations need to be made about the rack pricing provisions of H.R. 6722. The first concerns the position of jobbers and wholesalers in the market. It would appear that rack pricing would undercut their traditional role in the product distribution system. In order to survive, they would be forced to negotiate independent contracts for delivery with dealers, a process leading to high transaction costs and high risks. The second concerns the sale by small and independent refiners of gasoline at their company-operated stations. The attempt to force these refiners to justify the prices charged at their own stations will lead to costly litigation concerning accounting conventions, will inhibit the ability of these refiners to meet price competition from other sellers within their markets, and will expose them to the risk of criminal prosecution for setting market prices which these refiners believe to be legal but which may violate some technical definition of the term "the same profits" which no one could anticipate before the fact. These pricing restrictions are unnecessary and unworkable. Since they will chill the ability of small and independent refiners to compete aggressively in the market, the net result will be to increase the price of gasoline to the consumer.

Section 3(a)(2) provides that if a refiner wishes to sell a service station property, it must first give the dealer an exclusive 60-day option to buy at the offered price. During this period, the dealer may make a counter-offer to buy at a lower price. The refiner then has 30 additional days in which either to (a) accept the dealer's counter-offer, or (b) to offer to sell the property to the dealer at a price to be set by an appraisal using standards which would be set by the Federal Trade Commission.

The net effect of this provision will be to put just about every service station property leased to a dealer by a refiner through a forced sale proceeding if the refiner decides to sell the property. Since the dealer will have nothing to lose and a great deal to gain by going through the routine of (1) offer, (2) counter-offer, and (3) appraisal, the final selling price for these properties will almost always be set by the appraisal. Thus this provision raises serious questions regarding justice and equity. It is certainly not in the tradition of American law and it is similarly contradictory of our accepted notions of economic freedom that a legitimate business desiring to sell its private property should be forced by law to sell that property to another private business at a price to be determined by an outsider. Even accepting that such a forced sale might be advantageous to a particular community or state in order to keep the supply of gasoline intact, one must ask why only the dealer is given the right to purchase the property under these conditions? Why not a jobber, a chain marketer, or any third party who agrees to keep the station open? Since the effect of this provision will very likely be to force the sale of stations at prices

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are directly attributable to the two-tiered pricing system currently employed by the DOE regulations.

The service station dealers are the only marketing group which are unable to purchase at the rack price in Virginia. They are forced to purchase at the dealer tankwagon price which is 4 to 5 cents higher than the rack price. This disparity in acquisition costs, when coupled with the DOE regulations which restrict the profit margins at company operated stations and jobber operated stations result in serious distortions in the pricing structure of gasoline in the marketplace.

Currently, because of the restrictions, dealers are simply not able to compete with the other marketing segments of the industry. The enactment of a rack pricing provision would also place a great deal of competitive pressure on certain wholesalers and jobbers who in recent years have been moving more and more into retailing. Such a provision would also induce greater competition between jobbers, retailers and other marketers during periods of adequate gasoline supply. Such increased competition would also have significant consumer benefits as well.

The open supply provision would allow the dealers to purchase products from any supplier regardless of the brand. The complete opening up of the supply system would have significant beneficial effects for both small businesses and consumer shopping for the best buy in gasoline.

VGRA totally supports the proposed amendment suggested by Jack Houston of the Service Station Dealers of America relating to a fair rental limitation provision. In fact, VGRA was able to have legislation introduced at the 1980 session of the Virginia General Assembly which would have limited the amount of rental increases for service station leases so long as dealers are subject to Federal price and allocation controls, and this bill is being carried over to the 1981 session.

In Virginia, as is the case for dealers nationwide, the exorbitant rental increases being forced upon the dealers at a time when they are subject to price and allocation controls is unconscionable and a problem of the most serious magnitude.

Service station rentals have for decades been historically based upon a cents per gallon basis, with the retailer paying a fixed cent per gallon rent to his supplier-landlord on each gallon he pumped, with usually a minimal rent per month, but seldom a maximum. This, of course, was in the days of surplus.

Now that we have entered into a period of short supply and allocations of product with retailers unable to get enough gasoline for full operation of their station, and the oil companies are now starting to charge flat monthly rentals regardless of the quantities of gasoline supplied to the retailer or, for that matter, if they supply no gasoline at all.

Yet lessee dealers are restricted by the convenants of their lease to use the property exclusively as a retail gasoline service station. The property can be used for no other purpose, even though the supplier-landlord may be incapable of supplying gasoline products.

Another problem we have encountered is the fact that some producers, refiners, and wholesalers are willingly supplying new market entrants, such as convenience stores and motels with gasoline, and further diluting the amount of product allocated to service station dealers, thus increasing the cents per gallon rental to dealers under these fixed monthly rentals.

Certainly we would agree that a property owner is entitled to a fair return upon his investment; the oil companies are seeking up to 14 percent return on their appraisal for "highest and best use" of the property, not necesarily as a service station, plus real estate taxes and maintenance costs.

But this is in addition to the approximately 30 cents per gallon gross markup oil companies are already making from the sale of gasoline through their "captive" retail outlets, while at the same time diversifying into newspapers, circuses, coal, uranium, and department stores.

Lessee dealers, prohibited by their lessees from diversifying their business, are therefore at the mercy of their supplier-landlord. During these periods of critical shortage, you would think the oil companies would show some compassion toward their dealers.

During the latter part of January 1980, we conducted a survey on service station rentals among our membership. We requested information on service station rent as of January 1976, January 1977, January 1978, January 1979, and January 1980. We did this so that we might determine how much rentals have increased in the 4-year period since station rent controls were struck down by *Shell Oil Co.* v. *Federal Energy Administration.*

If you will refer to exhibit B at that point, you will be able to see what the average increase in rentals has been for these various companies and for the 105 stations responding. The average rental increase was 1.38 cents per gallon, an average increase of 79 percent in just 4 years, or double that of the Consumer Price Index.

Mr. Chairman, I want to thank you for the opportunity of appearing today before this joint subcommittee to present our views, and I will be glad to answer any questions you may have.

With your permission, sir, our general counsel, Mr. Bing, is with us. He has several comments he would like to make in addition to my testimony relating to some of the other matters before the committee.

Mr. **Bedell.** Fine; I believe we prefer to go through the regular panel and then come back to Mr. Bing. Your prepared statement will be made part of the record.

[Mr. Heizer's prepared statement follows:]

### Prepared Statement of James W. Heizer, Executive Director, Virginia Gasoline Retailers Association, Inc., Richmond, Va.; Accompanied by Richard M. Bing, General Counsel

Mr. Chairman: My name is James W. Heizer, Executive Director of the Virginia Gasoline Retailers Assocation (VGRA). VGRA is a trade association representing the service station dealers in the Commonwealth of Virginia. VGRA is one of the larger and stronger affiliates of the Service Station Dealers of America, Inc. (SSDA). You previously heard the testimony of SSDA as presented by Jack W. Houston, Acting Executive Director, at the last set of hearings held by these joint subcommittees on May 20, and 21, 1980.

Mr. Chairman and members of the Joint Sub-Committees, appearing with me today to assist in presenting the case for the Small Businessmen Service Station Dealers of Virginia is Richard M. Bing who is the General Counsel for VGRA.

Before I proceed with our testimony, permit me to set forth my qualifications to speak on behalf of the gasoline dealers in Virginia. I have over 30 years experience in the petroleum industry; 6 years as a gasoline retailer, and the past 25 years as executive director of the Virginia Gasoline Retailers Association. VGRA currently represents almost 1,300 members, or approximately 40 percent of all of the retail service stations in Virginia. Throughout these past 25 years I have appeared before numerous House and Senate Committees testifying on the illegal and anti-competitive actions of the major oil producers and refiners. I appear before you today to endorse H.R. 6722 and to call upon the Congress to act swiftly in enacting this legislation in order to prevent the impending destruction of small businesses in this country and competition in the petroleum industry.

My comments here today reflect the position of VGRA on H.R. 6722, a bill "to amend the small business act to provide special loan guarantees to small business concerns for the acquisition of motor fuel service stations, to require the divorcement from operation of stations owned and operated by certain producers and refiners of motor fuels, to control sales by producers and refiners of motor fuels, and for other purposes." If enacted, this bill would (1) ban all major refiners from directly operating retail gasoline outlets; (2) limit the ratio of a company's sales of gasoline through refiner-operated stations to its total gasoline sales to the same ratio in 1978; (3) allow branded dealers to buy gasoline from companies other than their normal suppliers (provided the dealers identify the gasoline as non-branded product); (4) require uniform pricing by a refiner at the rack for all customers; (5) give the proprietor of a leased station the right of first refusal if it is offered for sale; (6) make available small business administration loan guarantees for such purchases.

According to the Bureau of the Census, U.S. Department of Commerce, in 1972 there were 4,648 service stations in Virginia with 19,952 employees, for a total of 24,000 wage earners earning their living in this business. In 1976 the same Bureau of the Census reports only 3,237 service stations in Virgina employing 17,161 for a total of 20,398. This means that in those four short years 1,411 retail dealers were out of business along with 2,791 employees, for a total job loss of 4,202. Much of this reduction in the number of retail service stations—and the resulting loss of more than 4,200 jobs—may be traced directly to a coordinated effort by many individual refiners to force many smaller retailers pumping less than 30,000 gallons per month out of business, and replacing these smaller retailers with refiner-operated "gas and go" outlets retailing direct to the consumer.

According to Mr. William C. Lane, director of the Office of Competition of the Department of Energy, such a loss in the number of retail service stations and the dealers who operated them can be attributed to the overbuilding of service stations by the major producers and refiners in the 1950's and 1960's as well as the harsh effect that the DOE regulations have on branded service station dealers. This thesis is set forth by the person who is responsible for promoting and maintaining competition in the petroleum industry. Little emphasis appears to be placed on the growth of refiner operated stations in this country and the advantages that they enjoy which prevent the service station dealers from being able to compete on an equal basis. Since the oil embargo of 1973-74, I can name only a maximum of two new retail outlets which have been built in Virginia which were leased to a dealer. One of these is located in Northern Virginia and the other is in Tidewater. These stations are currently under construction and are only being leased to dealers because of the Virginia Petroleum Products Franchising Act which prohibit the major producers and refiners from company operating any station which is located within a mile and a half of any existing dealer-leased station. Had it not been for the wisdom of the Virginia General Assembly who recognized that the major oil companies were seeking to gain total control of the flow of petroleum from the wellhead to the gas tank, the growth and market share of refiner-operated stations in Virginia would be astronomical.

Virginia was one of the first States in this country to enact a divorcement type law and it was done in the face of uncomprehendible political pressure exerted by the major oil companies.

While Virginia's divorcement legislation was being considered by the Virginia General Assembly, the oil companies argued that the operation of retail gasoline outlets by the major producers or refiners was in the public interest as they were able to market the gasoline at such low prices. VGRA countered this argument by asserting that any price advantage to consumers by the sale of gasoline at company-operated stations would be short-lived and that in time the company-operated stations would increase their prices equal to or greater than those other outlets once they have cornered a significant share of the market. Today in Virginia we can see that the assertion of VGRA was correct. As an example, Crown Central Petroleum Corporation is selling regular gasoline at $1.22.8 while neighboring Exxon dealer operated stations are selling their regular gasoline for as low as $1.16.8. Crown, which only maintains company-operated stations in Virginia, for the longest time held its prices at the low end of the spectrum for all retail prices. However during the early part of 1979 when gasoline was in short supply, Crown began to significantly increase its retail price until it has reached its current high level.

Crown unilaterally ousted all of its dealers in 1975 because they claimed that the Crown dealers were making too high a profit on their gasoline sales. (Although Bill Lane and the Office of Competition feel that predatory practices have not occurred in the petroleum industry, I can't think of an act which is more predatory than that of Crown in ousting its dealers.)

As of December 31, 1978 Crown was posting a retail price of 59.9¢ per gallon for leaded regular. As of May 31, 1980 Crown was posting a retail price in Virginia of $1.22.8 for the same grade of gasoline. This is an increase of 62.9¢ per gallon in the seventeen (17) months since December 31, 1978.

VGRA monitors the wholesale prices for the major oil companies marketing in Virginia (see Exhibit A). As you will note the average wholesale price increase of these twelve (12) companies in Virginia was 49.8¢ per gallon. It should be noted that most of these companies only market through dealer operated stations in Virginia. Thus, for the corresponding 17 month period Crown increased its retail price by 13.1¢ above the average increase of these 12 oil companies in Virginia.

Congressmen, based on this evidence I ask "Can anyone honestly and in good conscience assert that the activities of Crown, by the pricing of its gasoline at company operated stations, to be in the public interest?" Regardless of what Bill Lane, DOE's Office of Competition, or the oil companies might argue, I would strongly assert that these company-operated stations are not the friends of the consuming public!

Therefore, it is very clear to those of us in Virginia that the argument that the operation of gasoline retail outlets by company employees is in the best interest of the consuming public, simply does not hold water.

At the present time States such as Maryland, Hawaii, the District of Columbia, Connecticut, and Delaware have all enacted varying forms of retail divorcement legislation. At least ten (10) other States are considering such legislation. Enactment of H.R. 6722 would preempt these State statutes and simplify and standardize the rules that apply to gasoline marketing. It would prevent the vertical integration of the major oil companies and thereby prevent the monopoly which would surely arise when oil companies are able to control the flow of petroleum from the wellhead to the gasoline pump.

The provisions of H.R. 6722 relating to rack pricing and open supply are of extreme importance to not only the dealers in Virginia but to the service station dealers nationwide. To a large extent the disparity in retail prices between the service station dealers, the jobber operated stations, and the company operated stations, are directly attributable to the two-tiered pricing system currently employed by the DOE regulations. The service station dealers are the only marketing group which are unable to purchase at the rack price in Virginia. They are forced to purchase at the dealer tankwagon price which is four to five cents higher than the rack price. This disparity in acquisition costs, when coupled with the DOE regulations which restrict the profit margins at company operated stations and jobber operated stations result in serious distortions in the pricing structure of gasoline in the marketplace. Currently because of the restrictions, dealers are simply not able to compete with the other marketing segments of the industry. The enactment of a rack pricing provision would also place a great deal of competitive pressure on certain wholesalers and jobbers who in recent years have been moving more and more into retailing. Such a provision would also induce greater competition between jobbers, retailers and other marketers during periods of adequate gasoline supply. Such increased competition would also have significant consumer benefits as well.

The open supply provision would allow the dealers to purchase products from any supplier regardless of the brand. The complete opening up of the supply system would have significant beneficial effects for both small businesses and consumer shopping for the best buy in gasoline.

VGRA totally supports the proposed amendment suggested by Jack Houston of the Service Station Dealers of America relating to a fair rental limitation provision. In fact, VGRA was able to have legislation introduced at the 1980 session of the Virginia General Assembly which would have limited the amount of rental increases for service station leases so long as dealers are subject to Federal price and allocation controls. In Virginia, as is the case for dealers nationwide, the exorbitant rental increases being forced upon the dealers at a time when they are subject to price and allocation controls is unconscionable and a problem of the most serious magnitude.

Service station rentals have for decades been historically based upon a cents per gallon basis, with the retailer paying a fixed cents per gallon rent to his supplier-landlord on each gallon he pumped, with usually a mininal rent per month, but seldom a maximum. This of course was in the days of surplus. Now that we have entered into a period of short supply and allocations of product—with retailers unable to get enough gasoline for full operation of their station—the oil companies are now starting to charge flat monthly rentals regardless of the quantities of gasoline supplied to the retailer, or for that matter, if they supply no gasoline at all. Yet lessee dealers are restricted by the covenants of their lease to use the property exclusively as a retail gasoline service station. The property can be used for no other purpose—even though the supplier-landlord may be incapable of supplying gasoline products.

Another problem we have encountered is the fact that some producers, refiners, and wholesalers are willingly supplying new market entrants such as convenience stores and motels with gasoline, and further diluting the amount of product allocated to service station dealers, thus increasing the cents per gallon rental to dealers under these fixed monthly rentals.

Certainly we would agree that a property owner is entiled to a fair return upon his investment—the oil companies are seeking up to 14 percent return on their appraisal for "highest and best use" of the property (not necessarily as a service station), plus real estate taxes and maintenance costs. But this is in addition to the approximately 30 cents per gallon gross markup oil companies are already making from the sale of gasoline through their "captive" retail outlets, while at the same time diversifying into newspapers, circuses, coal, uranium, and department stores.

Lessee dealers, prohibited by their lessees from diversifying their business are therefore at the mercy of their supplier-landlord. During these periods of critical shortage, you would think the oil companies would show some compassion towards their dealers.

During the later part of January 1980 VGRA conducted a survey on service station rentals among our membership. We requested information on service station rent as of January 1976, January 1977, January 1978, January 1979 and January 1980. We did this so that we might determine how much rentals have increased in the 4-year periods since station rent controls were struck down by *Shell Oil Company* v. *Federal Energy Administration*.

The following represent the significant results of this survey:

(1) Exxon showed a rental increase of .0145 CPG—an 80-percent increase
(2) Gulf showed a rental increase of .0125 CPG—a 77-percent increase
(3) Mobil showed a rental increase of .0096 CPG—a 61-percent increase
(4) Sunoco showed a rental increase of .0125 CPG—a 72-percent increase
(5) Texaco showed a rental increase of .0191 CPG—an 86-percent increase
(6) Union showed a rental increase of .0178 CPG—a 109-percent increase

For the 105 stations responding, the average rental increase was .0138 CPG—an average increase of 79 percent in just four years—over double that of the consumer price index. (See Exhibit B.)

Mr. Chairman, I want to thank you for the opportunity to appear before these Joint Subcommittees today to present the views of VGRA on this most important legislation. At this point, we would be happy to answer any questions you might have. Thank you.

## EXHIBIT A

WHOLESALE GASOLINE PRICES increased by 106.6% during the 17 month period from December 31, 1978 thru May 31, 1980, or an average of 49.8¢ per gallon on leaded regular gasoline. Listed below are the 12 companies which VGRA monitors.

| PRODUCT | WHOLESALE PRICE 5/31/80(ex.Tax) | WHOLESALE PRICE 12/31/78(Ex.tax) | WHOLESALE PRICE INCREASE | PERCENT INCREASE |
|---|---|---|---|---|
| AMOCO | 98.1¢ | 47.6¢ | 50.5¢ | 106.1% |
| ARCO | 96.6¢ | 46.3¢ | 50.3¢ | 108.6% |
| CITGO | 94.8¢ | 47.3¢ | 47.5¢ | 100.4% |
| EXXON | 95.7¢ | 45.7¢ | 50.0¢ | 109.4% |
| GULF | 100.2¢ | 46.7¢ | 53.5¢ | 114.6% |
| HESS | 98.5¢ | 43.5¢ | 55.0¢ | 126.4% |
| MOBIL | 92.6¢ | 47.3¢ | 45.3¢ | 95.8% |
| PHILLIPS | 99.2¢ | 48.2¢ | 51.0¢ | 105.8% |
| SHELL | 97.3¢ | 44.3¢ | 53.0¢ | 119.6% |
| SUN(200) | 99.7¢ | 47.9¢ | 51.8¢ | 108.1% |
| TEXACO | 94.2¢ | 48.4¢ | 45.8¢ | 94.6% |
| UNION | 90.5¢ | 46.8¢ | 43.7¢ | 93.4% |
| AVERAGE | 96.4¢ | 46.7¢ | 49.8¢ | 106.6% |

NOTE: THE ABOVE WHOLESALE PRICES DO NOT INCLUDE 13.0¢ IN FEDERAL AND STATE GASOLINE TAXES.

SEVEN YEARS OF GASOLINE PRICE CONTROLS: Even more astounding, in the seven years we have been under price controls (since May 15, 1973) the WHOLESALE PRICE of gasoline (ex. tax) in Virginia has climbed from an average of 18.8¢ a gallon to 96.4¢ a gallon -- an increase of 77.6¢ a gallon in WHOLESALE PRICE -- or a whopping 412.8% increase!!!

(Figures compiled by Virginia Gasoline Retailers Association, Inc.)

**EXHIBIT B**

### VGRA SERVICE STATION RENTAL SURVEY
(In Cents Per Gallon)

| Brand Name | Jan., 1976 Average Gallons | Jan., 1976 Per Unit CPG | Jan., 1977 Average Gallons | Jan., 1977 Per Unit CPG | Jan., 1978 Average Gallons | Jan., 1978 Per Unit CPG | Jan., 1979 Average Gallons | Jan., 1979 Per Unit CPG | Jan., 1980 Average Gallons | Jan., 1980 Per Unit CPG | Rent Increase 1976 To 1980 CPG | Rent Increase 1976 To 1980 Per Cent |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| AMOCO | 39,526 | .0179 | 45,611 | .0177 | 50,566 | .0175 | 57,420 | .0157 | 45,333 | .0217 | .0038 | 21% |
| ARCO | - | - | - | - | - | - | 37,409 | .0213 | 31,359 | .0302 | ??? | ?? |
| CITGO | - | - | - | - | - | - | 25,016 | .0987 | 33,956 | .0727 | ??? | ?? |
| EXXON | 60,054 | .0167 | 56,808 | .0200 | 54,075 | .0251 | 57,054 | .0250 | 50,459 | .0312 | .0145 | 87% |
| GULF | 39,116 | .0162 | 39,343 | .0171 | 40,496 | .0184 | 42,375 | .0203 | 42,008 | .0287 | .0125 | 77% |
| MOBIL | 51,035 | .0157 | 45,915 | .0201 | 55,881 | .0189 | 55,110 | .0194 | 61,107 | .0253 | .0096 | 61% |
| PHILLIPS | 21,749 | .0112 | 19,367 | .0201 | 14,864 | .0259 | 12,453 | .0241 | 8,086 | .0371 | .0259 | 231% |
| SHELL | 40,479 | .0175 | 42,798 | .0202 | 46,186 | .0196 | 50,673 | .0172 | 41,634 | .0260 | .0085 | 49% |
| SUNOCO | 37,335 | .0173 | 39,702 | .0189 | 42,533 | .0238 | 43,229 | .0243 | 36,753 | .0298 | .0125 | 72% |
| SPUR | 44,623 | .0100 | 74,903 | .0100 | 72,644 | .0124 | 66,531 | .0143 | 72,800 | .0275 | .0175 | 175% |
| TEXACO | 33,525 | .0222 | 34,227 | .0234 | 38,981 | .0245 | 37,761 | .0293 | 33,070 | .0413 | .0191 | 86% |
| UNION | 20,777 | .0164 | 22,051 | .0140 | 17,761 | .0189 | 17,958 | .0205 | 15,415 | .0342 | .0178 | 109% |
| AVERAGE PER STATION | 46,139 | .0175 | 46,005 | .0195 | 46,786 | .0222 | 48,778 | .0236 | 43,332 | .0313 | .0138 | 79% |
| STATIONS RESPONDING | 78 |  | 84 |  | 91 |  | 104 |  | 105 |  |  |  |

## AFFIDAVIT

I, Rbland H. Harris, of Henrico County, Virginia, Field Representative for the Virginia Gasoline Retailers Association, Inc. (1701 E. Parham Rd. Suite 202 Richmond, Va. 23228) do hereby solemnly swear and affirm that on June 3, 1980 between the hours of 11:45 a.m. and 12:35 p.m. I personally took photographs of the following retail gasoline outlets in the metropolitan Richmond area, to wit:

1) Exxon (company operated)
   Parham Rd. & Patterson Ave.
   Price: $118.9 regular (11:45 a.m.)

2) Sunoco (dealer operated)
   1501 Eastridge Rd. (12 Noon)
   Price: $120.8 regular

3) Crown (company operated)
   1504 Eastridge Rd. (12:05 p.m.)
   Price: $121.8 regular

4) Sunoco (company operated)
   Pemberton & Quioccasin Rd.
   Price: $118.8 regular (12:15 p.m.)

5) Crown (company operated)
   8148 W. Broad St. Rd.
   Price: $121.8 regular (12:30 p.m.)

6) Exxon (dealer operated)
   Parham & Broad St. Rd.
   Price: $117.9 regular (12:35 p.m.)

Each such photograph*depicts the posted retail selling price of each such retail gasoline outlet and is identified with a number corresponding to the members indicated above for the individual station locations.

I hereby swear that the above information is correct.

ROLAND H. HARRIS

WITNESS:

JUNE 3, 1980

*Photograhs are retained in Subcommittee files.

STATE OF VIRGINIA
COUNTY/CITY OF Henrico, Va.

Before me, the undersigned authority, on this day personally appeared Roland H. Harris, affiant, and Peggy M. Smith, witness whose names are signed to this affidavit, and after being duly sworn, the affiant, Roland H. Harris acknowledged that the facts in the affidavit are correct.

Subscribed, sworn and acknowledged before me by Roland H. Harris, affiant, this 3rd day of June, 1980.

SIGNED Zahn
Notary Public

My Commission expires January 29, 1981

Mr. Nilsson. My name is Glenn Nilsson. I represent the retail gasoline members of the Lone Star Service Stations Association.

Our offices are located in Houston, Tex., which as you know is the oil capital of the world.

The situation in Texas is not unique. The Nation is experiencing the mass execution of the independent gasoline retailer. The State of Texas has lost over 25 percent of its gasoline retailers since 1971.

Nationally, something over 22 percent have become a memory. Actual changes and unfair regulations began about the time of the gasoline shortage, and embargo of 1973. Some refiners began their move into company-operated retailing soon after the embargo by increasing volumes to company controlled units in strategically located areas.

Low prices were used to divert customers from their retail dealers' outlets. In this light, the gasoline retailer was left to compete with his own brand of gasoline down the street which was selling at or below the price charged the independent retailer by that same refiner. This has resulted in a shift in sales from dealer-operated to refiner-operated retail stations and, of course, has accelerated the elimination of the independent retailer.

Another method of pressure just mentioned was the increase of rental charges. Some of those charges have been completely out of reason.

We see dealers now paying $800 a month and the new 3-year contracts will go to $3,200 a month. The retailer cannot by law pass on that increase or any other operational cost to the consumer. Many retailers have closed their businesses with bitterness, feeling that unfair rules and regulations have caused that loss.

The gasoline retailer, being unable to recoup those extra expenses, has had to pay this added expense from his back pocket, and I feel like the back pocket has already been ripped all to pieces.

In doing away with the small retailer, we must ask ourselves, who will handle our mechanical repairs; who will help us when we experience a flat tire or dead battery? Already we note the lack of these and other services which actually imperil the lives of all on the Nation's streets and highways.

In quoting from a statement made by Milton Stewart before this committee on May 20 of this year, he said:

> Immediate relief by the Congress is probably the only measure that will prevent the continued decline of small business in those States not taking their own initiatives. In the area of petroleum marketing, small business has traditionally been the dominant force, providing the consumer with necessary service and auto maintenance at competitive prices. I have great cause for concern regarding the impact of decontrol. This is why decontrol of gasoline must be conditioned upon passage of this legislation which will protect small business from the dominant power of the integrated oil companies.

With the advent of removal of Federal controls on October 1, 1981, and the very real possibility that major refiner and large jobber operations could underprice competition until there is no competition, we feel that H.R. 6722 is the best answer to a most serious problem.

This bill is designed to give the small independent business an opportunity to compete on equal terms with all others in this field.

Requests for divorcement against the major oil companies are not new; in September of 1958 the Justice Department took a strong stand for similar action:

> Divorcement of major companies from retailing and ownership of retail stations, unless the majors get out of the retail end of the gasoline business, they will continue to "control" prices and gasoline marketing. As long as defendants own or control the use which may be made of service stations, there is no reasonable prospect that the operators of said stations will ever become truly independent businessmen free to conduct their business as their own judgment dictates * * *

And that is a quote from Business Week of October 4, 1958.

Again in early 1961, H.R. 11 and S. 11, functional divorcement bills to prevent integrated companies from operating company-operated stations in competition with their regular customers, were introduced. Hearings were held again in June of 1963 in SBA, subcommittee headed by Representative James Roosevelt.

In July of 1973, Senator Thomas McIntyre of New Hampshire introduced a bill which would prohibit firms from marketing refined oil products such as gasoline while also engaging in one or more of their other branches of industry, oil production, refining, and transportation.

Senator Frank Moss later that year said, "Any trend toward monopoly threatens the free enterprise aspect of the industry, stressing that a company in more than one phase of the industry is a threat to the free market."

In June of 1974, California's attorney general announced legislation requiring major oil companies to get out of the retail gasoline business. And finally, in 1974, the State of Maryland passed the first divorcement law in the United States, which became a reality a few years later.

In 1911, the Supreme Court decision broke the control that Standard Oil held over 19 other large oil companies. Major integrated oil companies are still taking actions similar to those that Standard took for control of retailers' prices, margins, and business methods.

I would like to quote from a letter written by President Carter on March 18, 1977. The letter was not addressed to me, but to another service station association, and he said at that time:

> I am most concerned that competition at the wholesale and retail level within the oil industry is not adequate. Vigorous application of our antitrust laws as well as legal restrictions on the right of a vertically integrated company to operate at the wholesale and retail level when it is also operating in the other phases of production, refining and transportation, have my support.

Mr. **Bedell.** You said the quote from President Carter to you. It's the other way.

Mr. **Nilsson.** No; this is a quote from President Carter in a letter addressed to another party. I have a copy of the letter I used this quote in.

Mr. **Bedell.** Thank you.

Mr. **Nilsson.** "America's independent service stations play a vital role in providing our people with gasoline at competitive prices. I strongly believe that it is the duty of our Government to insure that monopoly power and inadequate protection do not compromise the ability of independents to continue to compete, and to keep our industry healthy."

The rights of the individual American that were given to him by his forefathers must be honored and must continue in order that the free enterprise system survive.

We would encourage any person who has the drive to become through his efforts possibly another Exxon, and we would also encourage that his efforts be not denied, but promoted.

At the same time, the rights and economic viability of the small businessman must be retained. Without those rights, our economic system will be lost. We must recognize that the independent gasoline retailer, the butcher, the baker, and others like them have been and will continue to be what has made America a great Nation. We must allow that same privilege to be given to our children and to our children's children.

The major oil companies have seen a supply-demand situation benefiting big business during the last few years. With the recent high profit structure at the pumps, these companies have seen fit, nationwide, to acquire prime service station locations, the majority prior to H.R. 130, the dealer day in court bill.

Those locations, in times of shortage, have received an abundance of fuel, and have sold that fuel sometimes at or below the wholesale cost to their own dealer within that area.

I agree with Jack Houston, acting director of the Service Station Dealers of America, who said in testimony to this committee on May 21, 1980, "The destruction of small businesses and of competition will cease with the passage of H.R. 6722 and the public benefits of real competition in the retail marketing of gasoline will be maximized."

Mr. Chairman, this concludes my statement. Thank you for the privilege given our association and the service station dealers we represent for the opportunity to share your time.

In expressing our views on H.R. 6722, we hope that this bill will be presented to the full House and Senate in the very near future.

Mr. **Bedell.** Thank you very much, Mr. Nilsson. Your prepared remarks will be made part of the record.

[Mr. Nilsson's prepared statement with attachments follows:]

### PREPARED STATEMENT OF GLENN NILSSON, EXECUTIVE DIRECTOR, ON BEHALF OF THE LONE STAR SERVICE STATIONS ASSOCIATION, HOUSTON, TEX.

Mr. Chairman, my name is Glenn Nilsson. I represent the retail gasoline members of the Lone Star Service Stations Association, and would have to say that expressions made by myself or our office are of consequence to all gasoline retailers throughout Texas.

Our offices are located in Houston, Texas, the Oil Capital of the World. As such, we are contacted by the press and other groups as to conditions in the market, projections on pricing, future supplies, etc. We are certainly not an authority on any of the above, but as a result of our position, we are able to take the pulse of others in our field across the nation.

The situation in Texas is not unique—the nation is experiencing the mass execution of the independent gasoline retailer. The State of Texas has lost over 25 percent of its gasoline retailers since 1972. Nationally, something over 22 percent has become a memory. A total of between 80,000 and 100,000 small businesses are no more. Normally, only 10,000 to 20,000 of these units would have closed, due to retirement of the operator or just plain bad business operation or bad location.

Actual changes and unfair regulations began about the time of the gasoline shortage and embargo of 1973. Some refiners began their move into company-operated retailing soon after the embargo by increasing volumes to company controlled units in strategically located areas. Low prices were used to divert customers from their retail dealer outlets. In this light, the gasoline retailer was left to compete with his own brand of gasoline down the street, which was selling at or below the price charged the independent retailer by that same refiner. This has resulted in a shift in sales from dealer-operated to refiner-operated retail stations, and, of course, has accelerated the elimination of the independent retailer.

Another method of pressure on the retailer has been an increase of rental charges. Some of these charges have been completely out of reason; for example, from $800 per month to $3200 per month on new three year contracts.

The retailer cannot, by law, pass on that increase or any other operational cost to the consumer. Many retailers have closed their businesses with bitterness, feeling that unfair rules and regulations have caused that loss. The gasoline retailer, being unable to recoup these extra expenses, has had to pay this added expense from his back pocket. There have been so many back pocket expenses that I fear that he certainly cannot handle many more of them.

In doing away with the small retailer, we must ask ourselves: who will handle our minor mechanical repairs, who will help us when we experience a flat tire or dead battery? Already we note the lack of these and other services which actually imperils the lives of all on the nation's streets and highways.

Milton Stewart, Chief Counsel for Advocacy, U.S. Small Business Administration, in a presentation to these same committees on May 20, 1980, said, "Immediate relief by the Congress is probably the only measure that will prevent the continued decline of small business in those states not taking their own initiative . . . In the area of petroleum marketing, small business has traditionally been the dominant force, providing the consumer with necessary service and auto maintenance at competitive prices . . . I have great cause for concern regarding the impact of decontrol. This is why decontrol of gasoline must be conditioned upon passage of this legislation which will protect small business from the dominant power of the integrated oil companies."

With the advent of removal of federal controls on October 1, 1981, and the very real possibility that major refiner and large jobber operations could underprice competition until there is no competition, we feel that H.R. 6722 is the best answer to a most serious problem. This bill is designed to give the small independent business an opportunity to compete on equal terms with all others in this field.

We would support divorcement which would require the major integrated oil companies to cease operating direct co-owned service stations. They may, however, continue to own and lease those facilities to independent dealers.

Requests for divorcement against the major oil companies are not new; in September of 1958, the Justice Department took a strong stand for similar action: "Divorcement of major companies from retailing and ownership of retail stations—unless the majors get out of the retail end of the gasoline business, they will continue to 'control' prices and gasoline marketing. As long as defendants own or control the use which may be made of service stations, there is no reasonable prospect that the operators of said stations will ever become truly independent businessmen free to conduct their business as their own judgment dictates." (Business Week October 4, 1958)

Again in early 1961, H.R. 11 and S. 11, functional divorcement bills to prevent integrated companies from operating company-operated stations in competition with their regular customers, were introduced. Hearings were held again in June of 1963 in SBA, subcommittee headed by Representative James Roosevelt.

In July of 1973, Senator Thomas McIntyre of New Hampshire introduced a bill which would prohibit firms from marketing refined oil products such as gasoline while also engaging in one or more of their other branches of industry—oil production, refining, and transportation. Senator Frank Moss of Utah said, "Any trend toward monopoly threatens the free enterprise aspect of the industry—stressing that a company in more than one phase of the industry is a threat to the free market." In June of 1974, California's Attorney General announced legislation requiring major oil companies to get out of the retail gasoline business. And finally, in 1974, the State of Maryland passed the first divorcement law in the U.S.

In 1911, the Supreme Court decision broke the control that Standard Oil held over nineteen other large oil companies. Major integrated oil companies are still taking actions similar to those that Standard took for control of retailers' prices, margins, and business methods.

In a letter to President Jimmy Carter on March 28, 1977 asking for an equalization of wholesale prices between company-operated and dealer-operated units, I reminded the President of his statement of October 13, 1976 to the Louisiana Service Station Association: "I am most concerned that competition at the wholesale and retail level within the oil industry is not adequate. Vigorous application of our anti-trust laws as well as legal restrictions on the right of a vertically integrated company to operate at the wholesale and retail level when it is also operating in the other phases of production—refining and transportation—have my support.

"America's independent service stations play a vital role in providing our people with gasoline at competitive prices. I strongly believe that it is the duty of our Government to insure that monopoly power and inadequate protection do not compromise the ability of independents to continue to compete, and to keep our industry healthy."

The rights of the individual American that were given to him by his forefathers must be honored and must continue in order that the free enterprise system survive. We would encourage any person who has the drive to become, through his efforts, another Exxon, and we would also encourage that his efforts be not denied, but promoted. At the same time, the rights and economic viability of the small businessman must be retained. Without those rights, our economic system will be lost. We must recognize that the independent gasoline retailer, the butcher, the baker, and others like them have been, and will continue to be, what has made America a great nation. We must allow that same privilege to be given to our children and to our children's children.

With the take-over of big business, there is no reason to believe that the gasoline retailer will be alone in his loss within this system; others will soon follow.

Above all, I am an American who loves his country. I respect its heritage. I fear, however, that a great deal of the traditions of that heritage has been taken from us through the years. The major oil companies have seen a supply-demand situation benefiting big business during the last few years. With the recent high-profit structure at the pumps, these companies have seen fit, nationwide, to acquire prime service stations locations (the majority prior to H.R. 130, the Dealer Day in Court bill). Those locations, in times of shortage, have received an abundance of fuel, and have sold that fuel sometimes at or below the wholesale cost to their own dealer within that area.

We also note that in Europe, a major oil company discounted fuel on the market by 20 percent for 2 years, finally forcing the independent retailer out of business. Most of us realize the price of gasoline in Europe today is out of sight and the majors are realizing tremendous profits from those operations.

I agree with Jack Houston, Acting Director of the Service Station Dealers of America, who said in testimony to this committee on May 21, 1980, "The destruction of small businesses and of competition will cease with the passage of H.R. 6722 and the public benefits of real competition in the retail marketing of gasoline will be maximized."

Mr. Chairman, this concludes my statement. Thank you for the privilege given our Association and the service station dealers we represent for the opportunity to share your time. In expressing our views on H.R. 6722, we hope that this bill will be presented to the full House (and Senate) in the very near future.

Thank you.

Mr. BEDELL. Mr. Ligon?

Mr. Ligon. Mr. Chairman, members of the committee, my name is W. H. Ligon, managing director, Texas Service Station Association. TSSA represents the dealers across Texas, and we appear today to seek much-needed relief for these 12,000 dealers and all dealers in America. The relief has been needed for a long time, and we seem to have many that are opposed to this or any other type of relief.

As we view H.R. 6722 it is a bill that covers three prime areas of relief: Divorcement, rack pricing, and open supply pricing.

We believe that those opposed to divorcement do not want to admit that the oil companies are expanding their control of the retail market. If you will examine the DOE market shares report, you can readily see that the direct company operated stations have increased their market share by 61 percent since 1972. They contend that they do not intend to continue this expansion, but they do not offer any guarantee that this will not continue. To the best of my knowledge, there has not been a new station built since 1974 and offered to a dealer. If the oil companies are sincere in their statements that they are dealer-oriented, then why do they not offer dealers some of these new stations, if not all of them. We believe that if the oil companies are left to run their business as they are now doing, the independent dealer will be replaced by company-operated stations in the future.

The oil companies contend that their removal from the retail market will result in higher buying prices to the consumer. The higher prices to the consumer will appear at the pump anytime oil companies want to raise their wholesale prices. This has been shown in the past to be in the best interest of the profit for the companies. There has not been any competition at wholesale for the past 8 years.

I do not think the service station dealers of the United States are particularly adverse to competition. We are adverse to unfair competition. I think if the oil companies were placed in the same position that the dealers are being placed in, they would take the same position. Now, if you look at exhibit G, to the statement you have, Mr. Dansby of Ashland Oil Co. urged that fees be reinstated to protect U.S. refiners from competition from foreign refiners who have lower costs. That is strictly what we are adverse to. We are adverse to doing business with competitors who have a lower cost than our people have, competing for the retail dollar. The jobbers contend they serve functions on rack pricing, that they are entitled to a discount. The functions they are given are hauling. They are given an allowance. They collect rent. They offer credit, which is furnished by the major oil companies. They say they counsel oil dealers, which most say they can do without.

You add on the functions he charges for if he does not want them, he pays you no charge.

Also, the jobbers take the position that they are entitled to use wholesale buying to compete in retail. But if you go back to many volumes of testimony they have supplied to Congress, they say yes, but the refinery could not use their refinery profits to subsidize their retail outlets.

We are in the same position the jobbers are in. We want fair treatment, they want fair treatment. Now if you look at your exhibit E, this is a breakdown given in National Petroleum News by Truman Arnold, a Conoco jobber at Texarkana, Tex. If you look at 1977 to 1979 comparison, his salaried C-store in September of 1979, he said all he wanted was 2 cents amortization, 1 cent transportation, 1 cent distribution—total cents a gallon, 4 cents a gallon.

Truman Arnold is selling gasoline to his dealers at what dealer-operated stations he has at 7.7 cents markup over costs, yet he can put it through his C-stores, 4 cents a gallon.

Now if you look at exhibit A, these pictures were all taken in 1975, but they apply through 1975, 1976, 1977, and 1978. These are four major-brand stations, all jobber-owned and operated in Waco, Tex. They were pricing gasoline at 45.9. The Arco was 47.7, Mobil, 46.7, Shell, 45.7, and Texaco, 46.7. These are the type evils we are trying to get rid of. We do not think the jobber is entitled to use the wholesale price to compete.

You were told we have the Robinson-Patman law to protect us. In a lot of States, the Robinson-Patman Act is of no use to you. There is a case called *Bellman* v. *Texaco* in Utah, the dealers got a judgment against Texaco. It was appealed. The court held Texaco did discriminate in price, but the transfer did not occur across the State line. So if you do not get it in interstate commerce, they can discriminate all they want to and the Robinson-Patman Act is no good to you. All gasoline manufactured in Texas is sold in Texas, and there is nothing we can do about it.

Also, DOE said decontrol can help us, but we believe bad breath is better than no breath at all. We think we will be in trouble without controls, and I do not think you will see controls expire for the next 10 years because of all the things people think can happen to the small consumer if we get out from under the controls.

I think you are pretty well aware of the ills we have. If you have any questions, we will try to answer them for you.

Mr. **Bedell.** Thank you, Mr. Ligon. your prepared remarks and exhibits will be made part of the record.

[Mr. Ligon's prepared statement with attachments follow:]

# Prepared Statement of
# W.H. Ligon,
# Managing Director, Texas Service Station Association

Mr. Chairman and members of the Committee, my name is W.H.Ligon, Managing Director - Texas Service Station Association. TSSA represents the dealers across Texas and we appear today to seek much needed relief for these 12,000 dealers and all dealers in America. The relief has been needed for a long time and we seem to have many that are opposed to this or any other type of relief.

As we view H.R. 6722 it is a bill that covers three prime areas of relief. Divorcement, rack pricing and open supply buying.

## DIVORCEMENT

We believe that those opposed to divorcement do not want to admit that the oil companies are expanding their control of the retail market. If you will examine the DOE market shares report, you can readly see that the direct company operated stations have increased their market share by 61% since 1972. They contend that they do not intend to continue this expansion, but they do not offer any quarantee that this will not continue. To the best of my knowledge, there has not been a new station built since 1974 and offered to a dealer. If the oil companies are sincere in their statements that they are dealer oriented, then why don't they offer dealers some of these new stations, if not all of them. We beleive that if the oil companies are left to run their business as they are now doing, the independent dealer will be replaced by company operated stations in the future.

The oil companies contend that their removal from the retail market will result in higher buying prices to the consumer. The higher prices to the consumer will appear at the pump anytime the oil companies want to raise their wholesale prices. This has been shown in the past to be in the best interest of the profit for the companies. There hasn't been any competition at wholesale for the past 8 years.

RACK PRICING

The branded dealers are the best customers the oil companies have and this is the only business in the world where the best customer gets the worst price. Prior to the shortage in 1973, when there was a large reduction in the retail price of gasoline, the supplying companies would give the dealers temporary voluntary allowance (TVA) to be able to compete with their competitors. TVA is now a thing of the past, if a dealer wants to compete with other price cutters, he must do this with his money. The oil companies contended prior to 1973 that one of the reasons for the dealer paying an inflated DTW was the price protection he got from his supplier in times of price wars.

We contend that the branded dealer is entitled to the same buying price as his competitors, selling the same gasoline from a common delivery point. We have heard the independents tell how efficient they are at selling gasoline and they are entitled to a lower buying price. If they are as efficient as they contend, then they don't need a buying price. The jobbers have contended that they perform functions that entitle them to a lower price. They list these functions as hauling (for which they are given a hauling allowance), stations(for which they collect rent), credit(for which credit cards are furnished by their supplier), and counseling dealers(which dealers can very well do without).

In 1976, Jack Pester was the President of NOJC and we had a meeting with a reporter for National Petroleum News to discuss the dealer's desire for rack pricing. I asked Pester if his supplying company opened a station close to him and priced gasoline at retail 1¢ above his buying price, what his feelings would be...he said he would not like it. This is the posture of the branded dealers...we cannot compete with company operated, jobber operated and independent stations that are pricing within 1¢ of the dealers DTW. Many will tell you that the dealers want a guaranteed margin...this is not true...we simply want the foot race to start from the same point for all of those who are in the race. We have heard the jobbers and the independents complain of the unfair prices of the oil companies and their use of upstream profits to subsidize their marketing operations.

OPEN SUPPLY

We believe that if dealers were given the rights of open supply under this bill, that you would see a reduction in the price of gasoline to the consumer. We believe that oil companies would compete at wholesale for the first time in attempting to sell gasoline to their branded dealers, as they have competed in the past for open dealers and commercial accounts. We believe that a branded dealer now has the right to buy other gasoline and have so advised them. But there is still the threat from their supplying companies that it will catch up with the dealer down the road. We are not saying a dealer can sell other product under his supplying company trademark. We have advised them to cover all company logos on their pumps and to put a sign on their pump telling the consumer that this is not product from x oil company.

We believe that this will help to correct many abuses in the market place not only for the branded dealers, but for the jobbers and the independents. When you have a free and independent market, it will let free enterprise function as it was meant to be. There never has been a free market as far as the branded dealer is concerned.

Mr. Chairman, I could take many hours of your time to tell you horror stories about things that have happened to dealers, but I will try to keep away from that aspect of this industry. We do believe that rational men making a rational judgement about this bill, will see that it is fair and equitable to all concerned. We are not seeking to take advantage of the supplying oil companies, the jobbers or the independents...but we do believe we are entitled to the same fair and equal treatment as all others competing in the retail market place.

I thank you for the opportunity to appear here today and I will try to answer any question you might ask.

# TSSA NEWS

TEXAS SERVICE STATION ASSOCIATION-P.O.BOX9445-AUSTIN,TEXAS,78766-A/C 512-836-8639

OCTOBER 24,1975

## CAN YOU COMPETE

*These prices were in Waco,Texas on Monday,October 20th...the station in the lower right picture is Mobil...the following are DTW for Texas...prices on DTW are 1¢ higher in West Texas...*

*Arco..46.7   Mobil...46.7   Shell...45.7   Texaco...46.7*

DOE Market Shares

| | February | | | | | Percent Change |
|---|---|---|---|---|---|---|
| | 1979 | 1978 | 1977 | 1976 | 1972 | '72 - '79 |
| **Large Refiners** | | | | | | |
| Direct to Bulk Purchaser | 6.9 | 7.3 | 8.3 | 9.7 | 11.0 | -41 |
| Refiner Operated | 7.3 | 7.4 | 7.3 | 6.8 | 4.4 | +66 |
| Open Dealers | 11.7 | 11.8 | 12.2 | 12.4 | 12.3 | -5 |
| Lessee Dealers | 32.9 | 34.3 | 35.8 | 36.1 | 44.5 | -26 |
| Jobber Branded | 29.2 | 26.8 | 26.1 | 25.2 | 20.5 | +38 |
| Jobber Unbranded | 12.0 | 12.3 | 10.4 | 9.9 | 6.6 | +82 |

| | February | | | | | Percent Change |
|---|---|---|---|---|---|---|
| | 1979 | 1978 | 1977 | 1976 | 1972 | '72 - '79 |
| **All Refiners** | | | | | | |
| Direct to Bulk Purchaser | 5.4 | 6.1 | 6.5 | 7.5 | 9.2 | -42 |
| Refiner Operated | 12.2 | 12.8 | 12.6 | 11.7 | 7.7 | +58 |
| Open Dealers | 9.9 | 9.9 | 10.0 | 10.3 | 10.8 | -97 |
| Lessee Dealers | 25.5 | 26.5 | 27.7 | 28.7 | 37.8 | -33 |
| Jobber Branded | 25.2 | 23.5 | 23.0 | 23.3 | 20.1 | +25 |
| Jobber Unbranded | 21.8 | 21.3 | 20.1 | 18.5 | 14.4 | +44 |

TABLE 6. SHARES OF MOTOR GASOLINE TO MARKETING CATEGORIES BY LARGE INTEGRATED AND OTHER REFINERS (PERCENT OF REFINER GROUP'S SALES)*

| REFINER GROUPS AND SALES CATEGORIES | DEC 1979 | DEC 1978 | DEC 1972 | CUMULATIVE JANUARY TO DECEMBER 1979 | CUMULATIVE JANUARY TO DECEMBER 1978 |
|---|---|---|---|---|---|
| LARGE INTEGRATED REFINERS | | | | | |
| DIRECT SALES TO BULK PURCHASERS | 6.3 | 6.3 | 10.5 | 6.5 | 6.7 |
| REFINER OPERATED RETAIL OUTLET SALES | 7.0 | 7.4 | 4.9 | 7.1 | 7.4 |
| SUPPLIES TO INDEPENDENTS, TOTAL | 86.7 | 86.3 | 84.7 | 86.4 | 86.0 |
| BRANDED PRODUCT TO OPEN DEALERS | 12.1 | 11.6 | 12.3 | 12.0 | 11.7 |
| BRANDED PRODUCT TO LESSEE DEALERS | 32.0 | 33.1 | 44.3 | 31.6 | 33.1 |
| BRANDED PRODUCT TO JOBBERS | 30.7 | 29.6 | 21.0 | 30.6 | 29.3 |
| NONBRANDED PRODUCT TO JOBBERS | 11.8 | 12.0 | 7.1 | 12.2 | 11.8 |
| TOTAL | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| OTHER REFINERS | | | | | |
| DIRECT SALES TO BULK PURCHASERS | 1.5 | 1.2 | 2.1 | 1.6 | 1.9 |
| REFINER OPERATED RETAIL OUTLET SALES | 24.9 | 23.6 | 17.4 | 24.3 | 25.4 |
| SUPPLIES TO INDEPENDENTS, TOTAL | 73.6 | 75.2 | 80.6 | 74.1 | 73.2 |
| BRANDED PRODUCT TO OPEN DEALERS | 5.7 | 4.9 | 6.4 | 5.8 | 5.8 |
| BRANDED PRODUCT TO LESSEE DEALERS | 7.3 | 5.8 | 17.5 | 6.7 | 6.5 |
| BRANDED PRODUCT TO JOBBERS | 13.2 | 12.6 | 16.7 | 14.0 | 14.1 |
| NONBRANDED PRODUCT TO JOBBERS | 47.3 | 52.0 | 40.0 | 47.5 | 46.8 |
| TOTAL | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| ALL REFINERS | | | | | |
| DIRECT SALES TO BULK PURCHASERS | 4.9 | 4.8 | 8.2 | 5.1 | 5.2 |
| REFINER OPERATED RETAIL OUTLET SALES | 12.1 | 12.3 | 8.3 | 12.0 | 12.5 |
| SUPPLIES TO INDEPENDENTS, TOTAL | 82.9 | 82.9 | 83.5 | 82.8 | 82.3 |
| BRANDED PRODUCT TO OPEN DEALERS | 10.3 | 9.6 | 10.7 | 10.2 | 10.0 |
| BRANDED PRODUCT TO LESSEE DEALERS | 25.0 | 24.8 | 37.0 | 24.5 | 25.5 |
| BRANDED PRODUCT TO JOBBERS | 25.7 | 24.4 | 19.8 | 25.9 | 25.0 |
| NONBRANDED PRODUCT TO JOBBERS | 22.0 | 24.1 | 16.0 | 22.2 | 21.8 |
| TOTAL | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |

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*PERCENTS MAY NOT SUM TO TOTALS DUE TO INDEPENDENT ROUNDING.
SOURCES: U. S. DEPARTMENT OF ENERGY FORMS P305, P306.

## The Way We See It:

**Bill Ligon**

**Jack Pester**

**Jack Pester, president of the National Oil Jobbers Council, and Bill Ligon, managing director of the Texas Service Station Assn., recently debated the rising conflict between jobber and dealer segments in an exclusive discussion arranged by NPN.**

**Their comments present the way each sees what has fast become a hot issue.**

**Pester, a 160-million gal. plus direct-retail jobber, believes government regulations and economic forces have triggered a trend toward jobbers operating retail units direct. He once operated through dealers and says he has much respect for them.**

**Ligon is a key figure in the National Congress of Petroleum Retailers. He owns two service stations in Texas but both are leased out. He has been stumping for rack pricing for dealers, although he believes many dealers would be hurt if this comes.**

**He argues a key point which goes to the heart of the present conflict. Should jobbers operating direct receive the jobber function discount (or margin) while dealers competing with them pay normal (and higher) dealer tankwagon prices? (For a report on jobbers going direct, see page 38.)**

# Should Jobbers Get the Functional Discount?

**Pester:** Historically, dealers have had much more in common with jobbers than with the majors. The problems in the marketplace today caused by wide spreads in wholesale buying prices and by federal controls have created a lot of the pressures that have brought about present disagreements.

Much of this has been triggered by pure economics.

When we sit in a marketplace and have 4¢ gal. differences in dealer tankwagon prices, and the same situation for jobbers, it creates problems.

Some jobbers have gone to direct-retailing because they have been forced into it. A jobber who has a dealer go broke in a station that he has $100,000 or so invested in has to do something.

**Ligon:** Historically, dealers have gotten price support when in situations such as exist now. They don't get this anymore, so we can't talk about history. This is a whole new ballgame.

I can understand the jobber's position. They have some tremendous investments. But the dealer has only his station to do business in. He has to be given some way to compete in the marketplace.

The jobber ought to get the price he can justify. But we believe that instead of starting at the front and working backwards with functional discounts, we should work forward from a base or rack price.

If we are successful in getting rack pricing, we will agree that present rent figures are unrealistic. We agree that we will have to pay economical rents.

But when you are looking at 5¢ gal. gross margins for self-service, and from 7.5¢ to 9.5¢ gal. for full service, from rack prices, you can't buy at dealer tankwagon and live.

Some jobbers say we are advocating putting them out of business. But we've got jobbers competing with dealers at or below tankwagon. What would the jobbers' position be ✓ if their suppliers were to put in stations and sell 1¢ below their buying prices?

**Pester:** That's happening. You can go to Florida and see it. At least one refiner there in its own stations at times has sold below the jobber price. It happens often in commercial business.

✓ **Ligon:** I know that, and the jobbers don't like it.

**Pester:** We are in agreement on one thing. I don't blame dealers for ✓ not liking jobbers selling in service stations at or even that close to what a dealer pays. The dealer is entitled to survive.

You resent that some are able to use both margins and I can understand this. But many times dealer associations and even refiners don't put realistic evaluations on the functions jobbers actually perform. One of the big things they provide is rent subsidy.

If you and I built a MacDonald's hamburger stand, we'd insist on 12% return on our investment, with them paying taxes, insurance, and maintenance. Jobbers historically have absorbed rent subsidies and this is probably one of their biggest functions.

I'm pleased to hear you say that dealers are willing to look at realistic rents.

**Ligon:** Oil companies admit there is a 2¢ to 2.5¢ gal. rent subsidy in the tankwagon price. We need to rearrange the way they charge for things. It's got to get down to where good business practices dominate whether you do or don't stay in business.

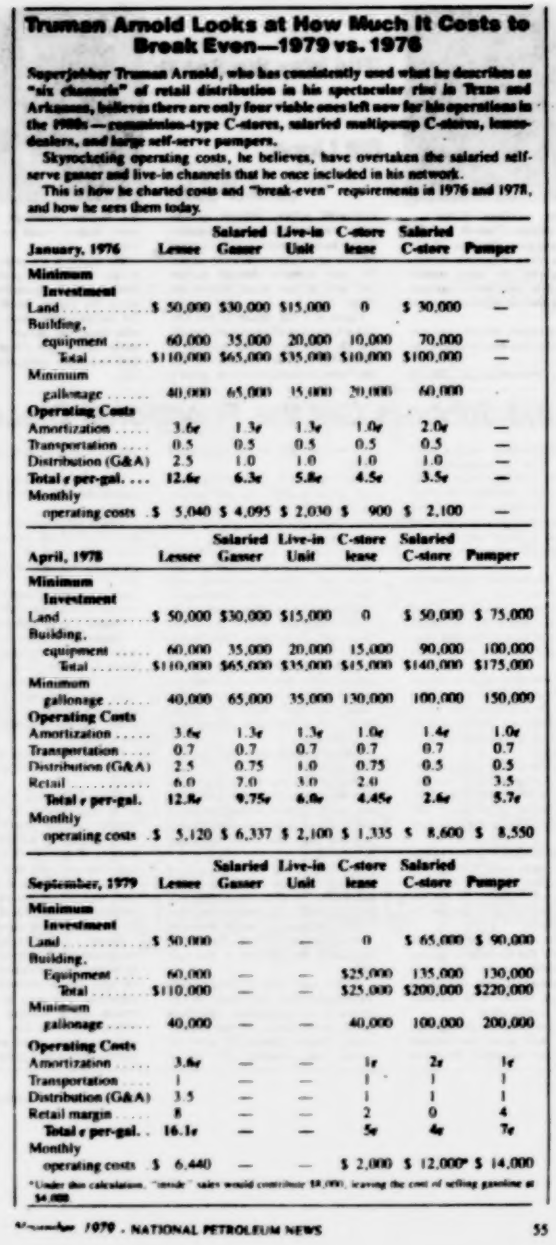
**Pester:** I agree with that.

**Ligon:** Eventually, those who stay will have a good business. We visited Gene Eisemann [Gulf Oil executive VP] in January. They had 32,000 stations five years ago. They will be down to 14,000 or 15,000 in five years. Those who survive will have a good business.

**Pester:** Did Gene tell you how many of those they're gonna run direct?

**Ligon:** Well, Jack, I believe if you go to rack pricing, in less than 24 months these oil companies will turn these ground-up self-serves over to dealers. If they don't have a shortage, they can't get down there with that price. Gulf has five in Austin, Tex., and Exxon has two. They are probably moving 60% of the product they were selling 16 months ago.

**Pester:** I hadn't thought much of the possibility that these units might be turned back to dealers. You may be right. The oil companies are cost-conscious. The costs of operating a station are a function of volume. When volume is lost, the costs of doing business direct are more expensive than with a dealer.



## Truman Arnold Looks at How Much It Costs to Break Even—1979 vs. 1976

Superjobber Truman Arnold, who has consistently used what he describes as "six channels" of retail distribution in his spectacular rise in Texas and Arkansas, believes there are only four viable ones left now for his operations in the 1980s—commission-type C-stores, salaried multipump C-stores, lessee-dealers, and large self-serve pumpers.

Skyrocketing operating costs, he believes, have overtaken the salaried self-serve gasser and live-in channels that he once included in his network.

This is how he charted costs and "break-even" requirements in 1976 and 1978, and how he sees them today.

| January, 1976 | Lessee | Salaried Gasser | Live-in Unit | C-store lease | Salaried C-store | Pumper |
|---|---|---|---|---|---|---|
| **Minimum Investment** | | | | | | |
| Land | $ 50,000 | $30,000 | $15,000 | 0 | $ 30,000 | — |
| Building, equipment | 60,000 | 35,000 | 20,000 | 10,000 | 70,000 | — |
| Total | $110,000 | $65,000 | $35,000 | $10,000 | $100,000 | — |
| Minimum gallonage | 40,000 | 65,000 | 35,000 | 20,000 | 60,000 | |
| **Operating Costs** | | | | | | |
| Amortization | 3.6¢ | 1.3¢ | 1.3¢ | 1.0¢ | 2.0¢ | — |
| Transportation | 0.5 | 0.5 | 0.5 | 0.5 | 0.5 | — |
| Distribution (G&A) | 2.5 | 1.0 | 1.0 | 1.0 | 1.0 | — |
| **Total ¢ per-gal.** | **12.6¢** | **6.3¢** | **5.8¢** | **4.5¢** | **3.5¢** | — |
| Monthly operating costs | $ 5,040 | $ 4,095 | $ 2,030 | $ 900 | $ 2,100 | — |

| April, 1978 | Lessee | Salaried Gasser | Live-in Unit | C-store lease | Salaried C-store | Pumper |
|---|---|---|---|---|---|---|
| **Minimum Investment** | | | | | | |
| Land | $ 50,000 | $30,000 | $15,000 | 0 | $ 50,000 | $ 75,000 |
| Building, equipment | 60,000 | 35,000 | 20,000 | 15,000 | 90,000 | 100,000 |
| Total | $110,000 | $65,000 | $35,000 | $15,000 | $140,000 | $175,000 |
| Minimum gallonage | 40,000 | 65,000 | 35,000 | 130,000 | 100,000 | 150,000 |
| **Operating Costs** | | | | | | |
| Amortization | 3.6¢ | 1.3¢ | 1.3¢ | 1.0¢ | 1.4¢ | 1.0¢ |
| Transportation | 0.7 | 0.7 | 0.7 | 0.7 | 0.7 | 0.7 |
| Distribution (G&A) | 2.5 | 0.75 | 1.0 | 0.75 | 0.5 | 0.5 |
| Retail | 6.0 | 7.0 | 3.0 | 2.0 | 0 | 3.5 |
| **Total ¢ per-gal.** | **12.8¢** | **9.75¢** | **6.0¢** | **4.45¢** | **2.6¢** | **5.7¢** |
| Monthly operating costs | $ 5,120 | $ 6,337 | $ 2,100 | $ 1,335 | $ 8,600 | $ 8,550 |

| September, 1979 | Lessee | Salaried Gasser | Live-in Unit | C-store lease | Salaried C-store | Pumper |
|---|---|---|---|---|---|---|
| **Minimum Investment** | | | | | | |
| Land | $ 50,000 | — | — | 0 | $ 65,000 | $ 90,000 |
| Building, Equipment | 60,000 | — | — | $25,000 | 135,000 | 130,000 |
| Total | $110,000 | — | — | $25,000 | $200,000 | $220,000 |
| Minimum gallonage | 40,000 | — | — | 40,000 | 100,000 | 200,000 |
| **Operating Costs** | | | | | | |
| Amortization | 3.6¢ | — | — | 1¢ | 2¢ | 1¢ |
| Transportation | 1 | — | — | 1 | 1 | 1 |
| Distribution (G&A) | 3.5 | — | — | 1 | 1 | 1 |
| Retail margin | 8 | — | — | 2 | 0 | 4 |
| **Total ¢ per-gal.** | **16.1¢** | — | — | **5¢** | **4¢** | **7¢** |
| Monthly operating costs | $ 6,440 | — | — | $ 2,000 | $ 12,000* | $ 14,000 |

*Under this calculation, "inside" sales would contribute $8,000, leaving the cost of selling gasoline at $4,000.

Table 5. Average Monthly[1] Sales of Retail Outlets[2] by Marketer Type (Gallons per Station)

| | U.S. Average | Refiner-Marketers | Nonbranded Independent | Branded Independent |
|---|---|---|---|---|
| Jan. 1975 | 31,751 | 54,731 | 65,744 | 27,803 |
| Jan. 1976 | 32,907 | 63,898 | 67,692 | 27,535 |
| Jan. 1977 | 35,439 | 64,713 | 56,744 | 30,164 |
| Jan. 1978 | 37,081 | 69,165 | 56,000 | 31,672 |
| Jan. 1979 | 37,200 | 79,250 | 48,951 | 31,427 |
| July 1975 | 35,943 | 59,606 | 60,186 | 32,030 |
| July 1976 | 37,614 | 66,392 | 62,660 | 32,610 |
| July 1977 | 40,653 | 76,048 | 64,496 | 34,715 |
| July 1978 | 40,246 | 83,227 | 55,624 | 34,033 |
| July 1979 | 37,596 | 80,595 | 60,756 | 31,087 |

[1] January data are not comparable to July data because of seasonal variations.

[2] The average sales per retail outlet shown here will not agree with data published prior to the September 1977 through January 1978 issue of this series of reports. Explanation of changes may be found in that publication.

Sources: Refiner-Marketers, U.S. Department of Energy Form P306; Nonbranded Independent Marketers and Branded Independent Marketers, Bureau of Census Forms, SG-1, 2, & 4.

# Small U.S. refiners blast end of import fees

U.S. INDEPENDENT refiners are accusing the Carter administration of being either indifferent or uninformed about the economic situation of the domestic refining industry.

They claim that the recent suspension of fees and tariffs on imported crude and products is another in a long series of negative signals to independent refiners who account for 30% of U.S. processing capacity.

Spokesmen for independent refiners dominated an Energy Department hearing on oil import regulations.

President Carter suspended import fees effective Apr. 1. They will be automatically reinstated unless the Energy secretary defers reimposition for a maximum of two 6-month periods.

**Reimposition urged.** John W. Dunby Jr., Ashland Oil Inc., urged that the fees on imported products be reimposed July 1 to protect U.S. refiners from competition from foreign refiners, who have lower costs.

He cited one study which showed U.S. refiners have a cost disadvantage of about $1.00/bbl compared with a similar plant in the Caribbean.

Another study found that decontrol of U.S. oil prices coupled with no restrictions on imported products would allow imports to displace more than 1 million b/d of current domestic refinery production as well as supply all of the increased demand growth on the East Coast and part of the Gulf Coast markets.

The cost advantages of foreign refiners, Dunby said, arise from numerous costs imposed by the U.S. government and from subsidies granted foreign refiners by their governments.

Domestic refiners have been able in the past to offset this disadvantage by protection under import fees, price controls, and the entitlements program. This protection is ending.

In addition, U.S. refiners face the possibility that DOE may grant full entitlements to product imports.

"The current approach of the government," Dunby declared, "is to decontrol crude oil, to maintain or escalate costs imposed on the refining industry, and to allow free entry of imported product into the country — moves designed to legislate and regulate the independent refiners into virtual extinction."

Jason Dryer, executive secretary of the Independent Refiners Association of America, said the import fee question must be settled as part of a comprehensive oil import policy. He warned that the government eventually must allocate imported crude so that independent refiners needing foreign oil get their share.

Chad J. Bordine of Ben Petroleum Products Co. stressed the disruptive impact of the fee suspension on past decisions based on having tariff and license fees. He said the suspension will further discourage potential investment and expansion in U.S. refining.

A spokesman for Dow Resources Inc. said a study conducted for the Domestic Refining Group showed an average product tariff of $1.40/bbl would be needed by 1980 to equal the past protection given by the entitlements program and 1978 product tariffs.

John Ramsier of Union Oil Co. applauded the fee suspension, saying it is "an overdue step in the right direction of reducing petroleum costs to the American consumer."

# Alyeska hits closing of pipeline haul road

ALYESKA Pipeline Service Co., operator of the trans-Alaska crude pipeline, says Alaska officials have created a serious logistics problem for the company by deciding to close the pipeline haul road from the Yukon River to Prudhoe Bay next winter.

An Alyeska spokesman said the company will ask the state Department of Transportation to help determine how pipeline maintenance crews and pump station personnel will travel to their assignments when the road shutdown occurs in September.

**Maintenance problem.** The road was built by Alyeska owners and then given to the state with the understanding that the state would maintain it.

The Alaska Legislature, however, allocated just a little more than one-half the $4.5 million needed to maintain the road year-round. For this reason, Robert Ward, transportation commissioner, said the road will be closed 6 months of the year.

"This will reduce our ability to maintain the pipeline," Alyeska said. "Also, crews at Pump Stations 3 and 4 use the road to drive to the stations from the air strip at the Galbraith Lake camp."

Maintenance crews for the pipeline use the road to drive to the access roads leading off to the pipeline right-of-way.

The road also is used to transport supplies by truck to Prudhoe Bay. Costly air transport would be required if the road is shut down.

Alyeska said it believes it has the legal right to take over the maintenance work itself.

However, with several months before the shutdown, the Alyeska spokesman said, "We won't panic. Some alternate method for transportation must be figured out, and we will hold meetings with the department."

5/28/79

THE OIL AND GAS JOURNAL [illegible]

Mr. BEDELL. Mr. Dan Usner, Louisiana Service Station Dealers Association.

Mr. USNER. Mr. Chairman, I am not here this morning asking you to protect us from competition. I am here to ask you to reinstate competition, to allow us to compete as we have proven we can.

Every person in this room this morning is, to some extent, a victim of the escalating energy shortage in our Nation. All of us are feeling the helplessness of skyrocketing gasoline prices and short supply. This is especially frustrating to those of us in the State of Louisiana, one of the Nation's most important producing and refining States.

The reasons for skyrocketing costs and short supply are being debated on every level of government. Is it conspiracy? Is it unnecessary and complicated regulation? Is it the Arabs? No one can answer definitively. Each of us close to the problem has trouble telling the difference between the root causes and the symptoms. It is, probably, the single most complicated issue facing all of us today.

H.R. 6722 is, purely and simply, the vehicle to return the marketing of gasoline to the free market system. H.R. 6722 is, purely and simply, free enterprise at its very best.

The rapid takeover of gasoline marketing outlets by the major producer/refiners in Louisiana signals the death of one of the most important, and last, consumer safeguards in the pricing of gasoline. That safeguard is the traditional competition among small, independent businessmen, living and working in their local community. The independent service station operator is the last line of defense for our State's consumers against total and absolute control of the supply and price of gasoline by a few multinational corporations.

In 1974, we warned that the threat existed. The Senate of the State of Louisiana heard our warning and responded by passing S.B. 409. Under extreme pressure from the major oil companies—and with the promise of big oil that they would not attempt to destroy the independent dealer—the house defeated the legislation.

The threat of 1974 has become a reality—in Louisiana and nationwide. Louisiana's community of independent service station operators is being willfully destroyed; with our death, the only true competitive force remaining in the petroleum industry is being systematically rendered impotent.

I am not here today to charge "conspiracy." I do not know, for a fact, that a conspiracy exists among the major oil companies. I am here to say, without fear of contradiction, that we are fighting for our lives, and the fight could not be more difficult if a conspiracy did exist. The end result, by coincidence or conspiracy, is the same.

I am not here this morning asking you to protect us from competition. I am here to ask you to reinstate competition—to allow us to compete as we have proven we can.

Reasonable men, be they big oil company lobbyists or small independent businessmen, can disagree. The multitude of reasons to justify company ownership and operation of service stations can be rebutted—one by one.

But how is it possible to stand in front of the consumer, or this committee, and effectively argue the most important point in the oil company's platform—their contention that they are able to sell gasoline at company-operated stations cheaper than their own independent dealers?

No matter where gasoline is being sold in Louisiana today, it is not cheap. And the reality of this situation is, simply, that company-owned stations are not selling "cheaper"—the companies are forcing their independent dealers to sell more expensively. Or, in another context, in order to generate support within a generally confused and angry consumer population, the companies are creating a most interesting illusion—a public-relations masterpiece.

Company-operated stations sell cheaper, they say. It is free enterprise at work—efficiency and bigness combining to save the consumer money. But today's situation has nothing to do with free enterprise or competition. In fact, it is a direct result of the manipulation of a controlled commodity which has brought us to our knees.

The growing number of company-operated stations have a unique advantage over independent dealer-operated stations. They do not have to make a profit. It is not that the major oil companies are willing to forgo the profit at the station level—the companies are forcing their own independent dealers to subsidize the company-operated stations by manipulating wholesale prices and allocations.

The fact that this "subsidy" situation exists was clearly substantiated by Mr. Alvin L. Alm, Assistant Secretary for Policy and Evaluation in the Federal Department of Energy. In a letter to a Louisiana Congressman, March 12, 1979, Mr. Alm wrote:

> The Service Station Association of Louisiana is rightly concerned with the market distortions caused by continued regulations of gasoline price and allocation. The regulations, imposed to deal with the shortage situation experienced in 1973-74, have severely distorted in a continued changing marketplace. They are now creating major problems for the very people they were designed to help—the independent segment (including retailers) and consumers.

The memorandum attached to this letter, originally issued December 20, 1978, states the following:

> Regulations establishing the pricing mechanism at the wholesale level have the effect of subsidizing the operations of vertically integrated refiner/marketers in two ways. Cost increases for gasoline at all levels—production, transportation, refining and marketing—are aggregated by refiner/marketers, producing one figure for total cost increases that is used to justify price increases at all levels. The pricing regulations envision that the resulting per-gallon cost increase figure will be uniformly added to the base period price at each marketing level, for each class of purchaser. Therefore, retailing cost increases are reflected in the wholesale price charged to independent marketers, which must compete with refiner-operated retail outlets. This inability of refiner/marketers to allocate costs to the marketing level at which they are incurred is, in effect, a powerful Federal program of incentives for price discrimination and subsidization which not only has the effect of giving refiner-operated stations inherent price advantage over their independent competitors, but actually exacts subsidization payments from independent competitors which are a refiner's wholesale customers. This subsidy has another effect, in that it encourages downstream vertical integration by a refiner. The refiner can integrate forward by building or expanding retail outlets, and pass the interest, depreciation and operating costs of that expansion on to its independent wholesale customers as a result of the cost increase passthrough formula.
>
> Those incentives have unique application when the refiner/marketer has exhausted its fund of "banked" costs and is also selling gasoline at its maximum allowable price, which price is below the prevailing market price. At this point, the refiner/marketer has a positive incentive to purchase high-priced gasoline on the open market in order to raise its average weighted price. In this fashion it can sell gasoline at or below market price and still increase its total income by significantly increasing the maximum allowable price for its lower priced equity gasoline.

6

To the extent that the refiner who originally sold the high-priced gasoline on the open market knows that it has a ready market for unlifted high-priced product, it will have no incentive to price at the prevailing market price in its sales to its base period purchasers. This has two effects: First, it drives the independent marketer, both branded and unbranded, out of business to the extent it cannot obtain product at wholesale price sufficiently below that of the new product purchased by the refiner to enable it to make a profit; and second, it forecloses supplies of gasoline from independent marketers.

The ability to bank certain reductions in price has no incentive effect to encourage discounts to independents so that they may be more viable competitors of the supplier, but merely enables the refiner/marketer to recapture foregone profits during period of tight supply, when the independent may already be in a precarious supply and price situation.

Let me state, in very simple terms, what all this means to the independent service station operator. In times of readily available gasoline supplies, as we have now, the company-operated stations sell at a lower price than dealer-operated stations. The major oil companies say that this is good for the consumer. The setting of artificially low, subsidized prices today is, historically, the forerunner of artificially high prices in a controlled market in the future.

Refiner-operated outlets can actually be operated at losses. For example, in the first quarter of 1979, at a meeting held in New Orleans, Exxon U.S.A. presented "Stewardship Recaps" to district managers indicating that of 26 company-operated outlets, 11 operated at a loss in that period, 3 operated at "breakeven" levels, and 12 operated at a profit. One outlet, with gasoline sales and a car wash, lost nearly $9,000. Another outlet, a car-care center with gasoline sales, lost approximately $16,000. When asked why he was to continue operating an outlet at a loss, a manager was told by his company representative that the outlet would be continued until "losses cut into wholesale profits."

I have personally examined an Exxon trend analysis profit and loss statement which the company prepared on one of their self-serve units.

The profit and loss statement shows that in 1978 that the station experienced an operating loss of 1.8 cents a gallon on more than a million-gallon volume of sales.

In 1977 this same station lost a little more than a tenth of a cent a gallon on more than a million gallons of sales.

This is indisputable evidence that refiner employee-operated stations are operated at a loss. On a confidential basis I can arrange for the committee chairman to examine the statement.

When gasoline supplies become limited, for whatever reason, company-operated stations raise their price to the highest allowable amount, then manipulate allocations to insure that their stations have gas to pump, while their own independent dealers are shot down.

Today, the major oil companies are telling the consumer that the Government is to blame for the lack of supply when it exists; but that the same Government, inept when it comes to solving the energy crisis, will protect the consumer from price-gouging. In the confusion, they are quietly reopening formerly dealer-operated stations which, as company-operated stations, miraculously have gas to pump even if it is at the highest allowable price.

Step 1. Force independent dealers to subsidize the company-operated stations.

Step 2. Manipulate the supply.

The result? The companies control which independent dealers are allowed to stay in business, and which high-volume and potentially profitable locations are to become company-owned stores.

The basic question underlying the need for H.R. 6722 is, simply: "To what extent has the company-operated station subverted the marketplace?"

FEA statistics in this case seem to substantiate our position that the "threat" of 1974 is rapidly becoming a reality. Between 1974 and 1977, the total number of service stations in the United States decreased by approximately 21,000 units, to approximately 180,000 units. The total number of dealer-operated independent stations decreased by 26,800 units. Company-operated outlets increased to 16,761. Later DOE figures are more alarming, however, indicating that from 1972 to 1979, approximately 50 percent of lessee dealers supplied directly left the marketplace.

The critical test of whether or not this alarming trend toward marketplace control is truly a reasoned, planned program should be statistics concerning the amount of gasoline pumped by these new company-operated stations.

Notwithstanding the lack of company cooperation concerning volumes, I believe the situation in Louisiana speaks for itself. The casualty list of dealer-operated stations, as incomplete as our data is, reads like a massacre. Let me review a partial list for this committee:

Shreveport: Cities Service has completely eliminated its dealer-operated stations, replacing them with company-operated outlets. Exxon presently has at least a dozen company-owned retail outlets in Shreveport and Bossier City.

Baton Rouge: Six Texaco stations converted to company-operated stations by 1979. Texaco presently waging a major campaign to eliminate selected dealers by circumventing "Dealer Day in Court" Act with the use of "subordination agreements," which transfer ownership of leased property to a third party, an investment company, not bound to the original lease terms. Six Gulf stations converted to company-operated stations by 1979. Gulf is presently expanding construction and operation of its "Majik Market" chain, a management concept through Gulf direct sales outlets. Seven Exxon stations converted, and 10 company-operated stations opened by 1979. Exxon was previously, here and in other markets, selling gasoline at a price which would force their branded dealers to lower profit margins 60 percent to compete with company-operated outlets.

Lafayette: A Texaco-owned and operated outlet, selling at a price low enough to require typical branded dealers to lower profit margins 30 percent in order to compete, opened with supplies sufficient to operate 24 hours per day. Exxon opened direct sales outlets which earlier required dealers to reduce profit margins by 35 percent to price compete. Unable to price compete due to low allocations and in order to pay increased rents, Exxon dealers being forced out of the market. Marshall Roberts, in particular, has given notice of intent to cease operating his dealer outlet.

New Orleans: Texaco refusing to renew selected dealer leases, thus forcing dealers to take individual cases to court to have leases renewed in accordance with "Dealer Day in Court" Act.

Twenty Gulf stations converted by 1979. Three new company-operated stations opened.

Four Exxon stations converted. Eighteen new company-operated stations opened.

The intention of the major oil companies is clear. Rather than reduce wholesale prices to their dealers so that all consumers would enjoy lower prices, they merely reduce the retail margin at their selected company-operated stations.

Mr. BEDELL. Thank you.

We have another vote on the floor of the House, which is what I was afraid of. It would be better if we could recess and come back. If it is agreeable with you we will recess, but I will get back as soon as I can.

The committee is in recess.

[Recess.]

Mr. BEDELL. The committee will come to order.

Mr. Bing, you have some testimony. You may proceed.

Mr. BING. I will take a very brief moment to respond to some of the testimony we have heard today. These are very brief comments on our initial reactions to some of the testimony.

Congressman Quayle asked Mr. Fuller, president of Amoco and representing API, "what can we," meaning the Congress, "do to insure fair competition; what can be done to equalize the problems in pricing that are occurring in the marketplace?"

Our answer is rack pricing and open supply, giving the dealers the opportunity to acquire their product at the same price or having the opportunity to start out at the same acquisition price, then you go from there to the economies of the marketplace.

Of course, the difference between the rack price and the dealer price is 4 to 5 cents. Allowing dealers to purchase at rack price will lower the consumer price right off.

Mr. Fuller also made a comment that "there are too many stations out there. Whether dealer-operated, company operated, or otherwise; I expect the loss of other stations in the future."

My question is, "what type of station does he believe will go out of business? What kind of loss can we expect?" Clearly to me the past history would indicate that the dealers are the ones who have suffered and it is they who will go out of business and not the company-operated stations.

Then Mr. Mitchell, from the University of Michigan, made the statement that the oil companies do not have economic power. Recognizing that the oil companies have over $240 billion of combined assets, I would call that just a little bit of economic power.

He also made a statement that oil companies have no motive to harm the dealers. We have heard testimony before from others and again today from Mr. Haslam, from Pilot, the statement that company-operated stations are cheaper to operate. We believe that this is the motivation by the refiners towards company-operated stations which is harmful to dealers. We also heard the statement that there is competition in the marketplace. I think no further comment needs to be made on that.

Mr. Copulos from the Heritage Foundation made the statement that divorcement would cost consumers approximately $240 million if divorcement goes through. We of course disagree with that, but assuming for the moment that thesis would be correct——

Mr. **Bedell.** I do not think he did make that statement. I think he said that would be the case if there were no decontrol and if this bill applied to all refiners.

Mr. **Bing.** The point I was going to make is that while $240 million sounds like a lot, and is a lot, of money, I think in the industry it is recognized that for every 1-penny increase at the retail pump, it corresponds to a total collection to the oil companies of about $1 billion. So approximately $240 million would work out to one-quarter of a 1-cent increase.

Mr. Haslam of Pilot Oil also made the statement that the cheapest way to operate is the company-operated-station route. Again, if that is the case, we wonder if the trend were to continue toward company-operated stations, who is going to perform the service work for all the automobiles on our highways.

This is a legitimate concern of the dealers.

Mr. Haslam also talked about employment and the loss of jobs for his employees, which of course is a legitimate concern, but as Mr. Heizer mentioned, it is also a concern of the service station dealers of America. We have already seen 80,000 stations closing. If you were to take an average of three employees per station, you are looking at a quarter of a million jobs lost in the past few years.

Chevron agents made a statement that if rack pricing goes into effect, the dealers will bypass the jobber and buy directly at the rack. Our position is that this is free and open competition and all we are asking for is the opportunity for the dealers to buy at the rack and to compete.

Finally, Bill Lane testified 2 weeks ago in his statement that he opposed rack pricing on the basis that there was no evidence that the dealers could handle the transportation function, and tying that into the statement of the Chevron agents, there would be some dealers who could not handle the function, so jobbers would still be involved.

But referring to Mr. Lane's comments, we would not be asking for, seeking or endorsing rack pricing if a significant number of dealers did not believe that they could handle the transportation function. We believe that is a weak argument to oppose the rack-pricing concept.

I thank you for the opportunity to make those comments.

Mr. **Bedell.** Mr. Haslam, you said you thought the company-operated stations were more efficient.

Mr. **Haslam.** Yes, sir, I personally believe that.

Mr. **Bedell.** What is it that causes that, in your opinion?

Mr. **Haslam.** I can just judge by our company, sir, but the way in which we basically operate, selling gasoline only. The idea is to sell high-volume at a low price. The dealer does a lot of service work and things like that. He would not have to, but he historically has.

Mr. **Bedell.** Did you not start out as a dealer?

Mr. **Haslam.** No, sir. I have always been independent.

Mr. **Bedell.** You were a dealer, were you not?

Mr. **Haslam.** I guess so.

You could say Pilot is one big dealer now, but we are a company operating stations with our own personnel.

Mr. **Bedell**. What are the advantages?

Mr. **Haslam**. Cheaper operations.

Mr. **Bedell**. In what way?

Mr. **Haslam**. Well, historically, people who have sold gasoline only have been able to operate much cheaper, and it is a cash-only business. It is basically a self-service business now, and we have been able to operate much cheaper. The point I made about the Lundberg survey, our average margin was 3.56 cents less than the average of all stations. We are willing to sell our gasoline at a less margin.

Mr. **Bedell**. Are you not really saying the gas-and-go operation, where you do not have the other services, can operate at lower costs than those who provide all the other services? You do not differentiate between your operations and a gas-and-go operation of one of these people.

Mr. **Haslam**. I guess it is possible, but there are very few people who are doing it. There are very few dealers who have a gas-and-go-only operation. Most dealers have lease facilities.

Mr. **Bedell**. Is that not caused by current limitations limiting the amount of supply?

Mr. **Haslam**. Maybe it is now, but in the gasoline business as I know it, the people who have been volume operators over the years—when I first got into business, I worked for a trackside operator. They bought gasoline in tank cars and sold it from there. He taught me the cheapest way to operate was to have your own man and three or four men there and spread the cost out over the stations.

Mr. **Bedell**. Your overhead per station is no different, is it, then if you were operating a chain?

Mr. **Haslam**. It is much less, because you are spreading all your overhead over these number of stations. Plus the fact if you are a large operator you are more efficient.

Mr. **Bedell**. I am trying to find out in what way your overhead is less operating as you do several stations as compared to whether you were operating one station as you were, I assume, when you started.

Mr. **Haslam**. Basically, I can spread my salary over a number of stations as all my overhead, accounting costs can be spread over a number of stations.

Mr. **Bedell**. With 10 stations do you not have 10 times as much accounting as you would with one station?

Mr. **Haslam**. No.

Mr. **Bedell**. Why?

Mr. **Haslam**. Because of economics.

Mr. **Bedell**. I do not know if what you are saying is right or not. We may as well forget about entrepreneurship in our whole society.

Mr. **Haslam**. I think I am an example. I started with one and now I have 95. I am sure they can do the same thing. I am sure they have more than one station.

Mr. **Bedell**. Then you do believe they are as efficient as you, those who have more than one.

Mr. **Haslam**. They could if they wanted to use the same method of operation.

Mr. **Bedell**. Do any of you operate gas-and-go stations?

Mr. **Usner**. I have a full-service station. I have a full-serve and self-serve island. Just buying gas cheap does not mean the consumer is getting a break. If nobody checks the oil, he will damage the car and it will cost him more money, but we have the two companies, Amoco and Shell, who are giving multi-units to dealers in order to give them the volume of gas so they can accomplish the same thing. So it is not necessarily the same thing of using salaried employees more efficiently, it is just that when you get a bigger volume of gas, you can move your allocation around and maximize your profits that way.

Mr. **Bedell**. I think he understands that.

Mr. **Usner**. A deal with a single station naturally is not as big a competitive advantage, but we do respond and we do make up the profit difference not through gasoline, but by offering other services. So efficiency has to be measured in the total concept of the operation.

Mr. **Haslam**. That is why the dealer has more. We are just strictly in the gasoline business, and that is the secret to low costs.

Mr **Bedell**. If there is a movement in our society from full service to self-service stations it seems it would be wrong for us to legislate to prevent that movement. On the other hand, it seems it is important to give these people an opportunity to compete, even though they may need to change their method of operations to do so. If the situation is such, which I question very much, but if the situation is such that by operating 50 stations you are able to do it significantly more efficiently than an entrepreneur who is operating one, two, or three, or whatever it may be, stations, then I think we have to have some concern about our society, because you say they can go to that, but how will they get started if it is more efficient for somebody to operate 50 stations than it is to operate one?

Miss Hoppe.

Ms. **Hoppe**. Mr. Haslam, when you are making this comparison on efficiency, the question of overhead concerns me. Can you estimate what the difference in overhead is between one of your stations, which I assume are all self-service, and a traditional full-service station which has a couple of islands and maybe two or three service bays, what are we talking about as to difference in overhead?

Mr. **Haslam**. I am not sure we can offer a large-volume self-service station for 2 and 3 cents a gallon. It is difficult to operate a full-service station at this price. So it is the basic game plan.

Ms. **Hoppe**. What we are saying is the full-service station is going to have more overhead because of the services?

Mr. **Haslam**. We have the cashier, one person on duty when you are open who can staff a 150,000-gallon-a-month station. A dealer doing that kind of business would need many, many more people.

Mr. **Bedell**. Do any of you lease? Are any of you leasing stations from major oil companies?

Mr. **Usner**. I do.

Mr. **Bedell**. It be in the terms of your lease, are you required to do other than simply have a self-service, gas-and-go station, or are you required to sell tires or do any of those sorts of things?

Are you free to have a gas-and-go station if you want to?

Mr. **Usner**. I am free to sell the gas any way I can most efficiently do it.

Mr. **Bedell**. You don't have to sell other products?

Mr. **Usner**. We do sell their tires and their oil and all the other things.

Mr. **Bedell**. My real question is this: If it is less costly for you per gallon to operate a high volume, gas-and-go station as compared to the type of station you are now operating, are you free to do that if you wished to do so under the terms of your lease, would you have that freedom?

Mr. **Usner**. I could sell the gasoline any way that I see fit.

Mr. **Bedell**. You could stop selling tires and stop all those other things and just have a station there where you just had people self-serve and put up a place in the middle for people to come pay their bills after they served themselves?

Mr. **Usner**. I could put a cashier in just to handle the gasoline sales. I would still have to perform services, because my station has bays, racks, et cetera, only we could peddle the gasoline and compete the same way he does, because I sell over 100,000 gallons of gas and if I wanted to go strictly self-serve, I could do it just by putting in a cashier and putting in the proper equipment so I could operate selling over 100,000 gallons with one employee.

Mr. **Bedell**. If it appeared you could compete better and stay in business better that way than what you are doing, would you be likely to do that?

Mr. **Usner**. I would if that is what the customers wanted. My customers want full and self-serve. I give them the choice.

If they are willing to pay the difference for the service, they come into the full serve island. The customer has the option.

Mr. **Bedell**. Mr. Bing?

Mr. **Bing**. I have had a chance to review quite a few of the leases of the major refiners and the wording of the leases for the most part is that the dealer is required to maintain the premises for full automotive service, the traditional service station.

He is required to provide all of the other types of services, although he is not required to purchase the products directly from that refiner, because that would be an illegal tie-in according to the antitrust laws, but the wording of the leases that I have seen has been that he has to maintain it as a traditional service station which means doing service work and selling tires, batteries, accessories, and so on.

Mr. **Bedell**. If Mr. Haslam is correct, that it is less costly to operate a gas-and-go type station than the type of station that is required to be operated by the major oil companies, and if then the major oil companies do put in stations which are gas-and-go stations and compete with the people that are leasing from them, it would appear to me we have a fairly serious problem if things move in that direction.

Is that a legitimate concern?

Mr. **Bing**. Absolutely.

Mr. **Ligon**. Mr. Bedell, I very seldom want to take up for the oil company, and maybe Mr. Bing has seen some leases I have not seen. Generally, the lease specifies you may only do automotive type services at the station, but it does not require that you do it but it limits it to this.

They try to keep you from having U-Haul rental trucks there and things of this nature, but I don't think the lease specifically says you must so service work.

The reason more dealers have not, we have had some dealers close their bays up, and to my knowledge have not had any trouble from their supplier and gone strictly to a self-serve operation because they happen to have a high allocation, and we have had no problems with it.

Mr. **Bedell**. But the supply is the major problem?

Mr. **Ligon**. The reason more of them are probably not doing it is because they can't get the supply to make it profitable.

Mr. Haslam, speaking about more efficiency, it becomes efficient when you have the high volume, and that gets there when you have a better buying price. We have got several major oil company dealers in Houston where the oil company has given them like two, three or one, as much as four self-serves, and I have seen them operate on a pool margin paying rent and everything out of their gross margin of 3½ cents a gallon.

It wasn't that he was efficient, but he had over 600,000 gallons of gasoline to sell and a basis to spread his costs over; but given the same buying price, as his competitors, he would probably have had less margin than that.

Mr. **Bedell**. And I think that is one of the concerns of decontrol is what will be the buying price for the different competitors in the marketplace.

With decontrol, certainly there is the freedom to price your product.

Mr. **Ligon**. People get confused about the equation of efficiency with price. A lot of people, I have heard them say here the dealers have gone out of business because they are inefficient, that the customers demand a new technical change in the way of doing business.

It wasn't the customers who demanded a new technical change, it was a change that took place in the business, because people were buying products at a lower price than where they had previously traded and they sought out a lower price but, given the same starting point, I believe all the dealers can compete where they will survive, and the efficient ones will survive in this business. It is because of price; they will be put out of business.

Mr. **Bedell**. We are running out of time. I assume that your feeling would be that indeed entrepreneurship does give incentive for a person to perform the best they possibly can, and that is why you have been as successful as you have, I would assume.

Mr. **Haslam**. Yes, sir.

Mr. **Bedell**. I would assume you think there have been some changes in the marketplace which have caused demand for a somewhat different type of service.

Mr. **Haslam**. That is correct.

Mr. **Bedell**. Is that accurate?

Mr. **Haslam**. Yes, sir; and I would like to reenforce what these gentlemen say, you will never have real competition at the retail level until you have competition at the wholesale level, and with the present allocation controls there is no way to have competition at the wholesale level, and I think everybody should start at the same level.

I would agree, the distortions we have, as much as 20 cents a gallon between wholesale prices, are the worst problem we have in the gasoline business today.

Mr. **Bedell**. Could you tell me the difference?

Mr. **Heizer**. May I make one final comment here?

I think Mr. Haslam has made one of the best possible arguments for the rack pricing provisions, because I am quite sure that Mr. Haslam is buying at the rack price, not at the dealer tankwagon price which my people have to pay, and he is buying that 4 or 5 cents a gallon cheaper and, as he has said, he is very proud of the fact that he has been able to sell at an average of 3.65 cents a gallon less than the national average as revealed by the Lundburg letter.

Mr. **Haslam**. That is the margin.

Mr. **Heizer**. The reason he is able to sell at a lesser margin is because he is buying at the rack price of 4 to 5 cents a gallon cheaper.

We are seeking the same rate for our dealers so that they can buy at the rack price and some day maybe some of my dealers in Virginia can go from one station up to where they have 95 stations like our friend, Mr. Haslam.

Mr. **Bedell**. I presume it would be true that you would buy at the rack price, I presume?

Mr. **Haslam**. Marathon has one wholesale price; and all the major oil companies have for their independent customers like us one wholesale price. They can't charge me more or less than anybody else.

Mr. **Bedell**. His argument is he pays a retail price whereas you pay the wholesale price.

Mr. **Haslam**. That is correct.

Mr. **Heizer**. We just want that same privilege, Mr. Chairman. We want to be able to pass that 4 or 5 cents on to our customers as well.

Mr. **Bedell**. You are both from Texas. I suppose Lone Star is the same as Texas.

Mr. **Nilsson**. That is correct. Both of these associations are approximately the same age, nearly 30 years.

Mr. **Bedell**. Competing organizations?

Mr. **Nilsson**. Yes and no, we smite one another on the back once in a while but, no, we are predominantly in the gulf coast area, so we attempt to work together.

Mr. **Bedell**. I sort of expect that in the oil industry, maybe. Are any of you members of the American Petroleum Institute?

Mr. **Ligon**. I used to be; I am not anymore.

Mr. **Bedell**. Are any of your members?

Mr. **Ligon**. Not to my knowledge.

Mr. **Bedell**. There are not many dealers members?

Mr. **Ligon**. Primarly supplier or jobber-oriented.

Mr. **Heizer**. I dropped the membership because I didn't feel like they were looking out for the interests of the dealer but were primarily looking out for the interests of the refiner and producer and to some extent the jobbers.

Mr. **Bedell**. Staff have any questions?

Ms. **Hoppe**. One question for Mr. Ligon.

You had made some reference to the Robinson-Patman Act not being applicable at this point because your transactions take place intrastate.

What would be the result if Robinson-Patman were amended to cover pricing abuses in or affecting commerce which would cover intrastate transactions and would give you a right of suit?

How useful would that be to you and what would be the remaining problems, your utilization problems with Robinson-Patman?

Mr. **Ligon**. We would rather have rack pricing in the law. It short-circuits involvements as far as loss is concerned.

Mr. Patman tried to get Robinson-Patman changed to go along with the rest of the antitrust laws affecting commerce and had no luck.

If we had this change in Robinson-Patman, then we would have the basis to go to court with them. It would be long, lengthy and expensive but we would have the ground.

Ms. **Hoppe**. You would also need something that would help speed up your judicial process.

Mr. **Ligon**. If you have to go through the judicial process, it is going to make it expensive. You don't speed up the Federal court.

Mr. **Bedell**. I guess you heard me speak on that. We have to realize what it costs for a small business person to go to court, and I don't think the public has that realization. There are an awful lot of people for whom that is not really a viable alternative.

Do you have something, Mr. Rosenberg?

Mr. **Rosenberg**. One final question:

There is another law that has been cited several times this morning as a shield for small business marketers of gasoline, and that is the Petroleum Marketing Practices Act, which does provide some protection against arbitrary termination of leases. My question is whether that law currently provides adequate protection to dealers or whether you feel that your members would need some other protection against arbitrary action by refiners or suppliers after decontrol or even now?

Mr. **Bing**. I think the biggest problem that the dealers face, certainly in Virginia, regarding that bill relates to rent, where the oil companies arbitrarily jack up the rent as much as 300 percent.

The Petroleum Marketing Practices Act does have a provision which says that a ground for nonrenewal would be where the parties failed to agree to a change in the lease, such as rental increase. But it also has a couple of other provisions there which states that the oil company can only rely on that ground if they can show, basically, that it is not punitive in nature.

They must show that they are not singling out that dealer for purposes of nonrenewing the lease, and also that they can justify their actions in the normal course of business. Those two things have to come together, and as a practical matter, I don't think the dealer can establish the lack of both of these factors which would therefore mean that the oil company could use that as a grounds of nonrenewal.

I read last night that there was a case in the Federal court in Connecticut recently where the oil company went up 300 percent on a renewal lease and the dealer simply couldn't pay it, and I don't know the specifics, whether there were actually negotiations—I doubt it very seriously—whereupon the oil company issued a notice of nonrenewal according to the act.

The judge held for the oil company by finding that the oil company was acting in good faith. I don't know the specifics, of the case, but that is not good news to us when we see a 300-percent rental increase upheld in Federal court.

Mr. **Ligon**. The biggest problem we got with PMPA, our dealers who are not members of dealer organizations who are not even aware of this law, and the oil companies to a great extent take advantage of acting in violation of PMPA simply because those people are not aware of the law.

Mr. **Rosenberg**. What you are saying is unless you are somehow given access to substantial legal resources, such as your association might have, that it is very difficult for a dealer to use the law, and I gather that is one of the reasons that there is so much support amongst dealer organizations for a structural change as opposed to a legal change?

Mr. **Ligon**. A dealer came to me whom they had sign a mutual cancellation agreement; he was not a member of our association, and they did not give him the letter in which he had seven days to revoke his mutual cancellation agreement. They let him sign it, and when the time ran out they put him out of the station.

You know, one of the things about PMPA, the reasonable part was the man stayed in his station and has an income while he goes through the court process, but after he is out of the station he is really lost.

He has got no place to go.

Mr. **Bedell**. We want to thank you very much for being here.

We particularly thank you for having to wait so terribly long.

Thank you, Mr. Haslam, for staying with us here. Your testimony was most beneficial.

Thank you very much.

The subcommittee is adjourned.

[Whereupon, at 2:25 p.m. the subcommittee adjourned, to reconvene subject to call of the Chair.]

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# SMALL BUSINESS MOTOR FUEL MARKETER PRESERVATION ACT—H.R. 6722

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THURSDAY, JUNE 5, 1980

House of Representatives, Subcommittee on Antitrust and Restraint of Trade Activities Affecting Small Business, of the Committee on Small Business, and the Subcommittee on Consumer Protection and Finance, of the Committee on Interstate and Foreign Commerce,

*Washington, D.C.*

The subcommittees met, pursuant to notice, at 10:05 a.m., in room 2359, Rayburn House Office Building, Hon. Berkley Bedell (chairman of the Subcommittee on Antitrust and Restraint of Trade Activities Affecting Small Business) and Hon. James H. Scheuer (chairman, Subcommittee on Consumer Protection and Finance) presiding.

Mr. Bedell. The subcommittee will come to order.

## OPENING STATEMENT OF CHAIRMAN BEDELL

Today we have the last in a series of hearings on gasoline marketing legislation. The Small Business Motor Fuel Marketer Preservation Act, H.R. 6722, and related bills. These hearings are being conducted jointly by the House Small Business Subcommittee on Antitrust, which I chair, and by the Interstate and Foreign Commerce Subcommittee on Consumer Protection, chaired by Congressman Jim Scheuer. Congressman Scheuer has advised me that the Commerce Committee recently changed its schedule and is having a full committee markup this morning. Consequently we may have to proceed without some of our colleagues from the Consumer Protection Subcommittee today.

We have four witnesses on our schedule. After being in session until after 2 p.m. yesterday, I am pleased to note the relative brevity of today's witness list.

Our first witness, Milton Stewart, is the Small Business Administration's Chief Counsel for Advocacy. He has appeared before my subcommittee several times and always has been a most informative and stimulating witness.

Following Mr. Stewart will be John Motley, appearing on behalf of the National Federation of Independent Businesses, the Nation's largest organization dedicated to representing the interests of our Nation's small business.

Next Tony White, representing the attorney general's office of the State of Washington. They have been very active in addressing restraint of trade and antitrust issues from the petroleum marketing industry.

Finally, John Oster, assistant vice president of American Energy. He will be speaking on behalf of a group of farmer cooperatives going into the alcohol fuel business.

We hoped to have a witness from the Federal Department of Justice with us today. However, I am informed they have not been able to complete their testimony in time for presentation today and will instead be submitting a statement for the record. (See appendix E.) Similarly, the National Small Business Association has advised us that they, too, will be submitting a statement for the record rather than testifying before us today. (See appendix F.)

If there are no objections, the Chair orders that the record shall be left open for 1 week to receive statements from the Justice Department, National Small Business Association, and others who wish to submit written comments for the record.

Mr. Tauke, do you have any statement you care to make?

## OPENING STATEMENT OF HON. THOMAS J. TAUKE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

Mr. **Tauke**. Thank you, Mr. Chairman.

Since this is our final hearing on this subject, I want to take this opportunity to commend you and the staff of the subcommittee for the openness of the discussions that we have had on this legislation and the thoroughness of the hearing process. I know that you have devoted countless hours to this legislation, not just in the hearing process but also in numerous contacts with people during the course of each day on the content of the legislation.

I am certain that every member of the subcommittee recognizes that there are several issues in this legislation that need thorough discussion, but I think we have the basis and foundation for making good decisions because of the excellent leadership that you have given the subcommittee in this entire hearing process.

Mr. **Bedell**. Thank you, Mr. Tauke. I would be remiss if I did not thank you for both your participation and your openness in looking at all angles of this issue and your desire to try to see something come from this that is as reasonable and makes as much sense as possible. I have been greatly impressed, as you know, with your dedication.

We are delighted to have you here with us, Mr. Stewart. You have appeared before us before and I think you know the great admiration I have for the work which you do in the Small Business Administration.

## TESTIMONY OF MILTON D. STEWART, CHIEF COUNSEL FOR ADVOCACY, SMALL BUSINESS ADMINISTRATION

Mr. **Stewart**. As always, Mr. Chairman, you are too kind. We in the Office of Advocacy have followed with great interest the hearings conducted by this subcommittee.

Let me summarize quickly by saying that my appearance here is to express support for the legislation that is before you. We, too, have been studying this problem in our role as small business advocates within the Government. The views expressed here with respect to this legislation are my own and not necessarily those of either SBA or the administration.

Mr. **Bedell**. In fact, we would encourage everybody here today to summarize their statement as much as possible and their full statements will always be entered into the record.

Mr. **Stewart**. There are in effect, Mr. Chairman, two sets of reasons for our great interest in seeing this legislation enacted.

The first—and my statement addresses that—is the specific position of the small gas station dealer in the economy and the effect of his demise in our view, the adverse effect on consumers. We are delighted that both of these subcommittees are cooperating in the effort to remedy the situation in narrow industry terms.

I would like, if I may, to provide some perspective, however. This is the second set of reasons that lead us to appear before you in support of this legislation. This has to do with the structure of our economy as a whole and to understand why we feel as strongly as we do, let me begin by referring to a report submitted to the President 2 weeks ago by his White House Commission on Small Business, headed by Arthur Levitt, the chairman of the American Stock Exchange.

On page 13 of this report, the statement is made as one of three overall objectives for the Nation for the 1980's, and I quote:

> Small business must play a larger role in national economic activity and should account for 50 percent of the gross national product by the end of the decade.

Among the activities of the Office of Advocacy it is our responsibility to spearhead the effort to establish what the President has called a small business data base to enable us all to know just how well small business is doing in the economy.

With the help of a Presidential directive and under leadership of the Office of Statistical Policy, Interagency Statistical Coordinating Committee with headquarters in the Commerce Department, we have helped both a technical and policy committee that is laying the basis and it will take us 2 or 3 years to get the job done, of establishing for the first time reliable data, valid data about how small business is really doing in the economy.

We are at the very beginning of this long, hard road of, for example, testing the feeling of every small businessman I know, the sense he has of being squeezed on the one hand by government, on the other hand by government-sized business. We call such business government-sized if they have 5,000 employees or have over $2 billion in assets.

Mr. **Bedell**. That is a quorum call that we have. I really think it would be better if we go over right now and answer the quorum call and come right back, if that is agreeable with you.

Mr. **Stewart**. It sure is.

Mr. **Bedell**. The hearing will be in recess.

[Brief recess.]

Mr. **Bedell**. The subcommittee will come to order. I am sorry for the interruption, Mr. Stewart. You may proceed with your testimony.

Mr. **Stewart**. Thank you, Mr. Chairman.

I was making two points: First, that we support this legislation because of the narrow industry characteristics that it addresses and the problems of the—specific problems of small gasoline station dealers. I was then relating our support to a larger national concern which we hope will be one of the highest priority concerns of the Congress and of whatever Presidents are in office during the 1980's.

The basis for this concern was laid at the White House Conference on Small Business in January when 1,600 small business people, the most representative—and I have to say most effectively eloquent in their own behalf—group of small business people it has ever been my privilege to meet with; those people were working under the charter to devise a small business program. Along with their effort, the President named a commission headed by Arthur Levitt of the American Stock Exchange and consisting of 10 small business people.

I was quoting from one of the three goals which that commission has set out for small business in the 1980's:

> Small business must play a larger role in national economic activity and should account for 50 percent of the gross national product by the end of the decade.

We have been at work to determine, in effect, what share of gross national product small business has now. That is a far more complex and difficult subject than would appear at the outset. As I explained before our recess, the President has directed the establishment of a small business data base, a number of Federal agencies are helping with its establishment, and we have reached the first point of consensus, the definitions we are going to be using in the future.

What I want to do is simply take 5 minutes to give you the initial estimate we have made about what is happening to small business compared to large business and to the Government.

These charts are inadequate in their present form. We will amend them with your permission for submission to the record. (See appendix.)

Let's begin with this one. I cannot emphasize that the methodology here is still being tested and is subject to correction.

What this attempts to do is to take the gross domestic product and to take the share of it—we have data for only 2 years, 1963 and 1972, only 2 years for which we have firm data. For this purpose, small business is defined as firms with 500 or fewer employees. What you see is that in 1963 such firms constituted 43.2 percent of the gross national product; in 1972, 40.2 percent. Large business, all firms with more than 500 employees, went from 40.1 to 42.4 percent.

Now those sound like very small numbers. Let's just see how small they are.

Our economists have projected those two numbers—we will have a third hard number at the end of the year for 1976. We have simply projected them, and this is all imaginary and you can treat it as a nightmare or a daymare, as you like, we think it is as accurate as any estimates we have seen.

Bear in mind Mr. Levitt and his commission's recommendation that by 1990 small business ought to have 50 percent of the gross national product, on our estimate, it will have 35.6, large business will have 46.3. The reversal in the nature of the American economy took place sometimes between 1963 and 1972, when the predominant position of small business was replaced by a predominance of large business.

These figures do not add to 100 percent because we have left the Government off. The Government belongs down here at about 12 percent, using the definition that the economists that drew this used [indicating]. We will amend it before we submit it for your record to show that.

The thing we have to confront and I have to tell you, I am going to become a very dull witness in front of congressional committees, I am going to bring these in this form and in our future forms to every hearing I am asked to testify at, because every committee in the Congress has a role to play with respect to the reversal of these lines.

One of our problems in dealing with the Congress is when we go to the Ways and Means Committee they say "The real problem is capital and credit, go to Banking and Currency." When we talk to Banking and Currency or Interstate about regulatory problems, they say "The real problem is taxes. Go to Ways and Means and finish."

We stand all of us like the characters in the Thomas Nast cartoon of the old Tweed ring, saying "It is not my fault, it is his." Well, it is everybody's fault. This is the forecast of an accumulation of Federal policies that are made in every agency in the Federal Government and in every committee of the Congress and unless we change them all, this is the bleak prospect we face.

Let me now narrow this a little bit to emphasize why the bill before you is of particular interest to us.

Mr. **Bedell**. Excuse me. When the bells ring again we have to go. We have another vote.

Mr. **Stewart**. Why don't I finish this chart? What this shows in essence, this takes two pieces of the large lines we showed before. It takes what we call government-sized businesses, firms with over 5,000 employees and $2 billion in assets or sales, of which we have about 250, among them all the major oil companies. Down here are what we call microbusinesses, firms with under 20 employees. Those are, you will remember, the firms that Professor Burch has told us create two-thirds of the new jobs in this economy, and what we see is really—and these are the two most sensitive to change groups within the numbers we have shown you on the other chart.

What we have is in effect a shift of almost an exact share of gross national product from the small business firms in the economy to the largest. So that you have what amounts to a 3-percent shift from firms with under 20 employees, like the gas stations, to firms with over 5,000 employees, like the major oil companies. It is because of this perspective and background that we consider your legislation so important.

All of the steps which we will be reviewing—let me emphasize they begin with an effort to firm these data in a number of directions, but all of the steps which we will be reviewing relate back to the general program of the White House Conference on Small Business, which consisted of 60 recommendations.

If I may conclude, Mr. Chairman, let me just read you one of those recommendations, and they deal with 12 different large subjects. I believe they are the most thoughtful assembly of steps we need to take to reverse those lines we have yet. One paragraph:

The merger and acquisition antitrust laws should be amended to, one, inhibit monopoly and conglomerate growth of giant companies, provided safeguards are built in to protect the needs of small business; two, prohibit dual distribution that adversely affects wholesalers, distributors, dealers, retailers, and franchisers and, three, prevent termination or nonrenewal of wholesalers, distributors, dealers, retailers, and franchisers without good legal cause.

In effect, the whole small business community represented here confirmed the need for new legislation and assessed existing regulation and concluded that it was inadequate. It is against this background that I appear here and recommend the enactment of the legislation you are sponsoring.

Mr. **Bedell**. What do you want to do, Mr. Tauke, go vote and come back? At least we are getting our exercise.

Mr. **Stewart**. It gives us time to think, Mr. Chairman, which is always appreciated.

I think it best if we go vote and come right back. The hearing is in recess.

[Brief recess.]

Mr. **Bedell**. The subcommittee will come back to order.

Thank you for your patience, Mr. Stewart. I think we should also thank the people in the room for their patience.

Mr. **Stewart**. Let me make some closing remarks, Mr. Chairman, about the significance of what I have tried to present to the committee and comment on the incidence of change that is going to be required.

As I have said, to keep this from becoming a Nation of government and government-sized business and nothing else is going to take a change on the part of a lot of people. What the American people want this economy to be is unquestioned, they want it to be predominantly an economy of moderate-sized enterprise.

How do we know that? I will submit as an appendix to this record the results of a survey done over 5 years of graduating high school classes. Forty-four percent of the people who graduate their high school, whether they go on to college or not, want to be self-employed. More people want to be in businesses with partners, small partnerships, or as employees for small business than want to work for the Government or want to work for large corporations. That is what American people want. That is not the economy we are producing for them with our statutes and our regulations.

And the final point, attitudes of our large business managers, the attitudes of big company managers in this country are, to put it subsequently with respect to small business, primitive. Let me give you an example.

Here is a sentence from a statement that was made here yesterday: "Regulations aimed at protecting individual competitors rather than the competitive process are anticonsumer."

That was made by a spokesman in opposition to this legislation. I do not recall a major spokesman for an oil company opposing the Chrysler loan because Chrysler is an individual competitor. I do not recall major corporations opposing relief measures for the steel industry or other industries that are dominated by large firms.

We have two-tier policies in this country which have supported the growth of the large enterprise and shrunken the growth of the small enterprise for the last, at least, 10 years and I think it is more like 40. If the 1980's are to be a period of compensatory growth for small business, legislation like that which you are considering has to be one part of the change we face. Small business is no great lover of either regulation or government. There were only two or three respects in which the delegates to the White House Conference were willing to see additional Government regulation. This was one of them.

They were prepared, they know they must have the help of Government to support their effort to stay alive in the face of the efforts of Government-sized business to dominate the economy beyond the point that they do now.

I appreciate the opportunity to have made these additional statements and I may well amend them with your permission, Mr. Chairman.

Mr. **Bedell**. Thank you very much, Mr. Stewart. Your prepared statement will be entered into the record.

[Mr. Stewart's prepared statement follows:]

### Prepared Statement of Milton D. Stewart, Chief Counsel for Advocacy, Small Business Administration

Mr. Chairman and members of this subcommittee, it is my pleasure to be with you this morning to comment upon H.R. 6722, the Small Business Motor Fuel Marketer Preservation Act. Let me note at the outset that my comments today reflect my views as Chief Counsel for Advocacy and not those of the U.S. Small Business Administration or the Administration.

As you know, the Office of Advocacy was established by Congress in Public Law 94-305 to articulate the needs and concerns of small business. I was appointed by the President and confirmed by the Senate as the first Chief Counsel for Advocacy in July 1978. Since that time the impact of the Nation's energy problems on the small business sector have become a prominent concern and high priority for our office.

#### OFFICE OF ADVOCACY ACTIVITIES: PETROLEUM MARKETING

Before I focus on the legislation before you today, let me take a few minutes to describe the Office of Advocacy's activities in the area of petroleum marketing.

Last year during the gasoline crunch this office became deeply aware of the serious problems facing independent petroleum marketers. On June 5, 1979, we held a public hearing in Los Angeles to examine these problems in greater detail. Our major finding from that hearing, simply put, was that Department of Energy price and allocation regulations and major oil company marketing practices were acting as two millstones, grinding the small business sector into a smaller and smaller share of the gasoline retail market.

As a result of that hearing, over the past year we have increased our activities in this area. We have stepped up our Regulatory Monitoring Project through which we review and comment upon all DOE regulations affecting small business. We have contracted for several studies of the gasoline retail market, the effects of regulations on small business, and proposed remedial actions. These activities have led us to two initial conclusions: (1) If current trends continue and the status quo is not changed, small businesses involved in gasoline marketing will continue to decline and may eventually be completely eliminated from the market; (2) immediate legislative relief by the Congress is probably the only measure that will prevent the continued decline of small business in those states not taking their own initiatives.

#### OVERVIEW OF THE PROBLEM

The issues before the Subcommittees today are of compelling significance for the entire economy. The relationships of large firms and their marketing practices to the viability of smaller firms represents a serious problem cutting across all economic sectors.

In the area of petroleum marketing, small business has traditionally been the dominant force, providing the consumer with necessary service and auto maintenance at competitive prices. Now, the actions of the OPEC nations have forever changed the structure and operating techniques of the oil industry. No longer can large integrated firms count on cheap foreign crude production as a profit center. Retailing for years was not managerially or financially desirable for integrated firms and was left to small business. Suddenly, with the growing need to develop new profit centers at each level of the industry, gasoline retailing has now become an appetizing market.

Now, as a result, some of the large integrated oil companies are rapidly increasing the market shares of their direct retail outlets. DOE figures show this trend clearly. Since July 1972, the number of direct company operated outlets increased from 11,313 to 14,238 in July 1979, and their market share in gasoline volume has more than doubled, increasing from 12.7 percent to 25.8 percent. At the same time there has been an even more dramatic change in the level of small business participation in gasoline retailing. The figures now indicate that nearly 100,000 small businesses involved in gasoline retailing went out of business during the 1970's. Last year alone this country lost 17,000 independent service stations, 10 percent of the total current population. The consequent effects on competition, employment, consumer service, and economic concentration are clearly negative.

Some industry analysts argue that these are natural trends, that these changes represent a move towards greater efficiency and that, in the end, consumers will be better served. In response I would simply pose the question: Would you as a consumer rather have several thousand independent small businessmen competing for your gasoline dollar, or a handful of large integrated oil companies?

No doubt some of the decline of the independent gasoline sector has been through attrition, natural causes, and factors not within our control. I believe that deliberate, carefully planned actions by some major companies to eliminate their own independent dealers are responsible for a large part of the market share shift. There is growing evidence that documents the extent of the problem.

DOE figures indicate that eight of the largest companies are responsible for most of the problem. Between 1972 and 1978 these eight companies accounted for 90 percent of the increase in market share of refiner operated stations. I have included a table from a recent report by DOE's Office of Competition showing this dramatic trend.

## WHO ACCOUNTS FOR THE VOLUME INCREASE IN REFINER-OPERATED RETAIL OUTLETS AMONG THE LEADING 28 REFINERS

[Millions of gallons of gasoline]

| Refiners | January 1972 | January 1979 | Difference | Percentage gain |
|---|---|---|---|---|
| Gulf | | | | |
| Marathon | | | | |
| Clark | 58.3 | 362.3 | 304.0 | 521.4 |
| Sohio-BP | | | | |
| Citgo | | | | |
| Mobil | | | | |
| Crown | 25.7 | 136.8 | 111.1 | 432.3 |
| Hess | | | | |
| Total all 28 refiners | 458.0 | 925.8 | 467.8 | 101.1 |

Reprinted from "Trends in Company Stores" by Robert N. Fenili and James B. Delaney, Office of Competition, DOE, December 1979, p. 4.

Source: Energy Information Administration Form P-306.

Two groups of four refiners have accounted for most of the rapid increase in refiner operated stations.

As if to confirm this information, our office has received complaints from small businesses about the marketing practices of most of the companies listed above. At the Subcommittee's hearing last October 11, for example, I presented Chairman Bedell with a copy of the BP-Northeast Project Plan, a document containing unmistakable evidence of that company's intention to eliminate its independent dealers.

I would like to digress a minute and comment upon the recent report released by DOE's Office of Competition, Part I of the so-called Title III report on refiner subsidization. This legislatively mandated report was intended to examine the subsidization of the sales of gasoline at retail and wholesale levels.

I have reviewed the first part of this study and wish it had been broader in scope. For example, the study could have been broadened to include available data regarding the refiners involved in rapid expansion of direct retail outlets cited above. Specific evidence of predatory actions by refiners such as the above mentioned BP plan was not mentioned. The DOE report also could have addressed the important issue of predatory cost practices, such as exorbitant rent increases, changes in credit and payment terms, and unfair enforcement of lease clauses. In short, Part I of the Title III study fails to comply with the Congressional requirements established in the Petroleum Marketing Practices Act. I understand DOE's Office of Competition plans to consider the question of net increases in Part II of the study to be completed this fall.

Continuing delays and difficulties with antitrust actions against the major oil companies emphasize the need for a stronger and more effective approach to preserve competition within this vital small business sector. The average small businessperson simply cannot compete with the legal resources of the major oil companies in anti-trust litigation.

Nor is earlier action taken by the Congress through passage of the Petroleum Marketing Practices Act in 1977 sufficient to preserve an independent and competitive gasoline retail market. Despite passage of that legislation, independents continue to decline at an alarming rate. As Senator Jackson stated in the debate on that legislation: . . . "We have to go the second mile and address the pricing power of the oil companies. If that cannot be accomplished today, it must be accomplished soon in the next Congress. If not, our competitive retail gasoline market is in severe danger."

Clearly, stronger action is necessary by the Congress to preserve what remains of competition in gasoline retailing. Since the debate on H.R. 130 in 1977 thousands more small businesses have dropped out of the market. Each month of delay adds hundreds more to the small business cemetery. Therefore I suggest immediate action is critical. If Congress does not act, the trends toward concentration will continue as large firms grow increasingly dominant, and in several years the gasoline market will never be the same.

### PROPOSED REMEDY: H.R. 6722

I would like to now turn to the specific provisions of the legislation under consideration today, H.R. 6722. First I would like to commend Chairman Bedell, and the members and staff of his Subcommittee for their outstanding work in recognizing and documenting the problems facing small business through a long series of public hearings. The bill before you today represents a great deal of well spent time and energy that will not go unnoticed by the small business community.

Let me say at the outset that H.R. 6722 has my endorsement and the endorsement of the entire small business community. I believe that, though this bill may not go as far as I might like, it contains the critical elements necessary to preserve a viable and competitive gasoline market.

Section 3 of the bill prohibits major refiners from directly operating any retail outlets. Smaller refiners would be subject to a "refiner sales ratio" which ensures a continuing share of those refiners' product for independent operators. This provision, I believe, focuses on the crux of the problem. In essence it ensures an arms length relationship between the retail and upstream sectors of the petroleum industry. No longer will refiners be able to drive dealers out of business, to increase their market shares through predatory tactics, or to distort the workings of a competitive market place through their dominant control of supply. Retail divorcement, as provided by this bill also ensures the viability of small refiners who do not benefit from the integrated control over crude supplies and economies of the scale of the major oil companies.

Divorcement at the national level will also avoid a patchwork of state regulations and statutes. Several states including Virginia, Connecticut, Hawaii, the District of Columbia, Maryland, and Delaware have all enacted varying forms of retail divorcement. At last count, some ten additional states were considering this legislation. Enactment of H.R. 6722 will preempt these state statutes and simplify and standardize the rules that apply to gasoline marketing.

I recognize the need to ensure small businesses opportunity to purchase their stations if major companies wish to sell their property. The provisions providing the dealer with the right of first refusal to purchase the station is therefore a necessary requirement in the bill. Furthermore, I believe it is well within the overall goals of the Small Business Act to provide SBA assistance, where necessary and feasible, to service station operators purchasing their property. The amendments to the Small Business Act contained in this legislation are an effective and justified means of accomplishing this end. SBA has recently moved towards focusing our programs more on specific national problems, whether they be the problems of race or sex discrimination or energy, and this provision is a step in this direction.

The so-called open supply and rack pricing provisions of the legislation are of major concern to small business. Open supply will forever change the nature of gasoline marketing by dramatically increasing the flexibility—and competitiveness—of the retail industry. For years we have seen the major oil companies switch supplies among themselves. We all know nearly all brands of gasoline are identical. Opening up the supply system will have significant beneficial effects for both small businesses and consumers shopping for the best buy in gasoline.

Perhaps the most potentially controversial section of the bill is the provision establishing rack pricing, that is, similar prices for similar quantities of product. On face value, this measure is a basic step towards ensuring equity in the marketplace. We believe it would have a generally beneficial effect and reduce the spread in retail prices. It would also clearly place a great deal of competitive pressure on some wholesalers and jobbers who in recent years have been moving, more and more, into retailing. Over the longer term, however, this measure may tend to eliminate arbitrary price distortions in the marketplace and induce greater competition between jobbers, retailers, and other marketers during periods of adequate gasoline supply. Obviously this increased competition will have significant consumer benefits, as well.

In the final analysis, this legislation provides badly needed measures to preserve and open up competition in the retail gasoline market. In such a heavily regulated industry sector one may wonder why further government intervention is necessary. There is no question in my mind about the answer. For although the current price and allocation regulations, burdensome as they are to small business, ensure at least some level of supply to existing stations, they simply do not and never were intended, to address the complex anti-competitive forces in the gasoline marketplace.

When price and gasoline controls expire, which is currently scheduled for Fall 1981, many retail dealers may find themselves without a source of supply. With no government allocation system, small business will have no other means of leverage with their major suppliers. Considering the voluminous complaints regarding major refiner marketing practices, I have great cause for concern regarding the impact of decontrol. That is why decontrol of gasoline must be conditioned upon passage of this legislation which will protect small business from the dominant power of the integrated oil companies.

Though I could spend much more time on this critical small business issue, that concludes my comments for the time being. I would be glad to answer any questions members of the Subcommittee may have.

Thank you for this opportunity to testify.

Mr. Tauke. Thank you very much, Mr. Stewart, for your very interesting testimony this morning. I just might say that I prefer to think of this legislation not so much in terms of additional regulation but in terms of the Government playing its proper role in the economy.

It occurs to me there are two ways that consumers can be protected. One is through Government regulation which we have pursued in the energy industry over the past several years. The other is the Government playing the role of referee to insure there is adequate competition, which will help protect the consumer. The latter role is the one we are trying to pursue with this kind of legislation.

Mr. Stewart. I could not agree with you more. I think the way you have just put it is more accurate than the way I did. I, for example, support decontrol as soon as we can get it, but as soon as we can get it includes the enactment of this legislation first.

Mr. Tauke. Let me just ask a few questions.

First of all, relating to the information that you have in this chart, I wonder if there is information of a similar nature available prior to 1963?

Mr. Stewart. We are not even sure about that. We think there is, that the Government has it in data files, historically. They have never been sorted just this way. We are still not certain. This work was done for us by a distinguished economist who is an alumnus of the Council of Economic Advisers. He is still reviewing for us how we can get retrospective data and prospective data.

Mr. **Tauke**. I think it would be interesting to see when the trends began.

The second question I have relates to this legislation in particular. We have heard quite a bit of argument during the course of the hearings that this legislation is not pro-small business because the open supply and rack-pricing provisions will put small jobbers or jobbers who generally are classified as small businesses out of business.

Second, it has been argued that this legislation is not proconsumer because it is rewarding inefficiency in the marketplace.

Do you care to comment on either of those allegations?

Mr. **Stewart**. Let me try a few general comments.

On the first point, it is incredible to me that anybody would characterize this legislation as anti-small business. There is simply no basis on which there is any justification for that kind of assertion.

You cannot confront the brute fact that somewhere between 80 and 100,000 small businesses have died in this industry because of the absence of legislation like this, in my view, although there may be other factors, market factors, and others may die for market reasons; far fewer will die if this legislation passes. There is no doubt in my mind if you are for small business you must be for this legislation.

As I said before this committee once before, I decided to support it because the alternative, doing nothing, will inevitably in my opinion lead to the elimination of small independent gas retailers.

The people who say well, only half of the major oil companies are at the moment sopping up the business, I do not know what it has to take before you become concerned about the gravity of a problem.

Now if you take those numbers or you take the data about small gas dealers, everyone who appears before you and says something like that should be made to say at what point will you support this legislation? When another 100,000 gas dealers have gone down the tube? When are you prepared to say that the problem is serious enough from the standpoint of small business to warrant this kind of action? The people who oppose it never are prepared to say that.

What must we see in the upward line there before the big business leaders of this country see that itself as a threat to the enterprise system? 70 percent, 80 percent, 100 percent? Where are we as citizens warranted in becoming concerned? So far as I am concerned, if anything this legislation is 5 years too late, from the standpoint of small business, that is.

On the consumer issue, again, I have no doubt about it, there may be for temporary market reasons moments when major oil companies, for their reasons, see fit to drop prices to consumers by small amounts, for tactical market reasons. But I have no doubt but that the consumers of this country are better off with a mass of 2 or 300,000 retail outlets than they are with the control of retail pricing in the hands of major corporations.

I am 57 years old, I have seen competition in at least 100 industries, and the venture capital business; I have never seen an exception to that rule.

Mr. **Tauke**. I just might observe also that in addition to the economic factors involved, there are many other things involved. I think perhaps one of the more important has to do with the kind of communities we are going to live in. If we don't have small locally based enterprises to keep our communities thriving, then we are going to have a much different lifestyle in this country.

Mr. **Stewart**. I could not agree with you more. I was raised in a small town called New York City, which at that time was a place made up of hundreds of neighborhoods which were in effect very small villages, where people knew one another and the small businesses in those neighborhoods really held them together. And much of the problem of our cities, where the causes and effects are, I am not wise enough to know, but small business is an integral part of the best of the good life that is in this country. And the people of this country understand it very clearly and it is time that its big business leaders and its Government leaders understood it.

Mr. **Tauke**. Thank you very much, Mr. Chairman.

Mr. **Bedell**. Thank you, Mr. Tauke.

Mr. Stewart, you gave us some figures in your testimony, and I didn't get them, in regard to the survey of high school graduating classes.

Mr. **Stewart**. I will submit them for the record. The survey was done by the Survey Research Center of the University of Michigan. It is done every year. Approximately 20,000 graduating high school seniors, one sample of whom are going on to college and one sample of whom are going directly to work, were asked what kinds of career lives they wished to have. They were asked to characterize as acceptable and not acceptable employment in 8 or 10 different kinds of enterprise. At the head of the list is self-employment; 44 percent, whether they are going to college or not, want to be in business for themselves.

We are providing, incidentally, on our estimates, 7 percent of the labor force with self-employment opportunities. And for people who talk for free enterprise, a good beginning point of the legitimacy and honesty of their concern is how long can we continue to provide 7 percent opportunity for self-employment for a population that wants at least 44 percent and expect them to continue to support the enterprise system.

Mr. **Bedell**. But you gave us some other figures of how many went beyond that.

Mr. **Stewart**. Can I provide them for the record?

In general, here is what they show, roughly 44 percent for self-employment, approximately 17 percent for work in small partnerships, approximately 16 percent for work in small businesses, non-owning, as employees. Employment by large corporations, my recollection is 16 to 20 percent, order of magnitude over the 5 years. No higher than that for Government.

Mr. **Bedell**. I would appreciate receiving those.

Mr. **Stewart**. We will have them for you for the record. (See appendix G.)

Mr. **Bedell**. I do not think I need to take a lot of your time, Mr. Stewart. I have heard you before. I do not know one who speaks as well for both the small business community and for what at least I perceive as I would like to see in our society. You do it most effectively.

I am sorry there are not more of the subcommittee here to hear what you had to say. You should know, one of the arguments that is made against this legislation and I think in fairness against the perception of this legislation, comes out as I hear it, to say that small entrepreneurship is less efficient than big business and therefore, as we try to protect the entrepreneur from big business competition, we are bringing about less competition and higher consumer prices.

I tell my people that I—I just asked them whether they think the Federal Government or local government is most efficient? They can decide that question whether big or small is more efficient. Maybe you would like to answer that?

**Mr. STEWART.** Only to this extent, on the subject of efficiency, again we are not inexperienced. Those of us who come from the world of business, we know there are small inefficient businesses, there are also very inefficient large ones.

The difference between the two is when the large ones fail it makes a much larger splat in the economy. When W. T. Grant went down, 1,400 stores failed. I happen to believe, based on my own experience, that if those 1,400 stores had been owned by not more than let us say 2 stores to any entrepreneur, fewer of them would have gone down. There is less likelihood that the mismanagement would have had the large impact it did.

In some industries, in some companies, large enterprise is more efficient than small. On an overall basis, there are only two fields in which large firms generally, and this is not the result of size but the result of law and regulation, large firms are more effective than small ones in access to the capital and credit markets. Large firms are more effective than small ones in influencing the Government, particularly the Federal Government. And both of those are a reflection of the presence or absence of laws or regulations.

On a business-to-business basis, we can show you small firms that will match in productivity or efficiency any large firm extant. In terms of return on investment, take the 100 small firms listed recently—we will provide them for the record—by INC magazine 2 months ago. Higher return on investment, higher rate of growth than the Fortune 1300 or the top seven oil companies.

The effort to relate size to efficiency is ludicrous at a time when we are confronting for the first time in the history of our country, on the heels of the biggest merger wave we have ever had, the first 10 years we have ever had of inflation, the first drop in productivity in the history of the country. We must be asking the other question: Is there a point at which big business gets so big that it begins to lose efficiency and productivity? Because hypothetically, today, that is a far more reasonable and realistic proposition.

**Mr. BEDELL.** We certainly thank you for your testimony. I am glad I was here to hear it. We certainly appreciate your being with us.

**Mr. STEWART.** Thank you, Mr. Chairman, Mr. Tauke.

**Mr. BEDELL.** Our next witness is John Motley, deputy director of legislative affairs for the National Federation of Independent Business.

We appreciate your being with us here, Mr. Motley.

We would encourage you to summarize wherever you can in the interest of time.

## TESTIMONY OF JOHN J. MOTLEY III, DEPUTY DIRECTOR, LEGISLATIVE AFFAIRS, NATIONAL FEDERATION OF INDEPENDENT BUSINESS

Mr. **Motley.** Thank you, Mr. Chairman.

As always, it is a pleasure for me to come and appear before this subcommittee.

I do have a very brief statement which I will submit for the record and summarize even more briefly so that you can get on with your other witnesses.

The reason I am going to summarize is because we have testified on this subject several times in the past and I think you know where we are coming from. The data that we lent to the original discussion is already on the record. So there is no need for me to go over that ground again.

Let me simply state in the beginning NFIB's pleasure that you got into this subject in this Congress. We felt that it has been needed for some time. And we feel very strongly that this segment of the small business community needs help very quickly. So we thank you for your concern and we hope that you are successful in pursuing this legislation.

The basis of our testimony today really is that we believe that the record that has been laid before this committee shows a need, a strong need, for a structural remedy for the problems in gasoline marketing.

The 1978 Petroleum Marketing Practices Act was obviously not the answer for many small gasoline station operators across the country. It is also very obvious that the inequality that exists, or inequalities that exist in the resources available to the major integrated oil companies in this country and their franchise dealers preclude other legal remedies, or at least legal remedies before those dealers go out of business.

I do not appear here today and NFIB does not appear in the role of a technical expert or technical witness on the content of H.R. 6722. I think we will leave the technical questions to those who we feel are better qualified to answer them, those in academia and in the petroleum industry itself. We do appear here today to state very clearly to this committee that we believe that there is an urgent need for enactment of a Small Business Motor Fuel Marketer Preservation Act, and that we support H.R. 6722 and we will work for its enactment in this committee, in the full House, and in the Senate. We support it very strongly.

And with that, Mr. Chairman, I will be glad to answer any questions that you or Mr. Tauke might have.

Mr. **Bedell.** Thank you very much. Your entire statement will be entered in the record.

[Mr. Motley's prepared statement follows:]

### Prepared Statement of John J. Motley III, Deputy Director of Legislative Affairs, National Federation of Independent Business

Mr. Chairman, I am John J. Motley III, Deputy Director of Legislative Affairs for the National Federation of Independent Business (NFIB). On behalf of NFIB and its

603,000 small member firms, I am grateful to have this opportunity to express our support for the passage of H.R. 6722 the Small Business Motor Fuel Marketer Preservation Act, which would limit oil company activity in gasoline retail marketing.

Although NFIB members have historically been opposed to divestiture legislation, in this instance they have chosen to favor forbidding major oil refiners from directly operating retail gasoline stations. This position emanates from the perception that a clear conflict of interest exists when suppliers compete directly with those they supply. The rapid decline in the relative role being played by independent gasoline retailers during a period of rising gasoline prices and steady gasoline consumption has been truly alarming.

Traditionally, gasoline stations have been operated by independent dealers which either own or lease their stations, and use the refiner's names. Typically, a much smaller proportion of gasoline stations have been operated by the actual refiners. Since the early 1970's however, there has been a strong downward trend in the total number of retail gasoline stations, a decrease which has not occurred evenly by type of retail station. According to statistics published by the Department of Energy, the number of refiner-operated stations increased by 25 percent from May of 1972 through May of 1979, while the number of independent dealers decreased by almost 48 percent in the same period. At the same time, DOE statistics indicate that refiner-operated stations have also substantially increased their relative share of gasoline sold since 1972. Since January of 1972, refiner-operated stations have increased their relative share of gasoline sold by 13 percent. This trend in the gasoline retail industry has also been reflected in the size of NFIB's service station membership. While NFIB's total membership has more than doubled over the last decade, the number of our service station members has fallen by 50 percent. [NOTE.—NFIB's membership growth has been uniform across all industries.]

In our view, it is no coincidence that the rapid growth in refiner-operated stations began soon after the nationalization of Middle Eastern oil facilities in the early 1970's, in conjunction with the control of the domestic price of oil. These two events served to reduce oil company profits, which encouraged large oil firms to consolidate retail operations and operate them internally. This step provided an additional profit source with little added net capital costs. Although oil companies have always profited from gasoline retailing through leasing arrangements with independent dealers, many refiners argue that company-owned and operated stations are more profitable because they sell higher volumes of gasoline and employ fewer people. Since the refiners supply the gasoline and often lease the facilities to independent dealers, they are in a position to place independents at a competitive disadvantage either by direct or indirect means.

We will not repeat the cases reported by NFIB members citing predatory costing and supply practices, since we addressed them at length before this subcommittee last fall. Suffice it to say, that it has become apparent that many independent dealers, especially lessee dealers (independent marketers who lease the station, land and have use of the refiner's tanks, pumps, signs, etc.), have been subjected to predatory costing tactics principally along the lines of frequent and unwarranted increases in monthly rents. Rent increases have either taken the form of increases in the refiner's gallonage take on the volume of gasoline sold, or in switches from gallonage to flat monthly rates above the gallonage rates. Another apparently typical but indirect method of squeezing a dealer's profits has been to require independent dealers to be responsible for the maintenance of facilities which previously were taken care of by the refiners. This practice is effectively the same as raising the dealer's rents. During the gasoline shortage in the summer of 1979, many independents were also faced with severe cutbacks in their allocation, while company-owned and operated stations of the same refiners had their full allotments and were able to stay open for significantly longer hours.

Although it is doubtful that the predatory practices described above are all-encompassing, the intended results are the same—severe profit squeezes on the independent dealers to the point that survival is no longer possible.

## THE NEED FOR LEGISLATION

Opponents of H.R. 6722 claim that legislation is not only unnecessary but that it will also be ineffective in promoting the stability and health of independent gasoline retailers. This argument rests on the contention that laws already in existence can help independent dealers who are being subjected to predatory practices, and that government regulation is really at the heart of the problems being faced by independents.

On the first point, it is true that the Petroleum Marketing Practices Act of 1978 does provide for the protection of distributors and retailers of gasoline under a national trademark by establishing protection from arbitrary or discriminatory terminations or non-renewals of leases, prohibiting the refiners and resellers from failing to renew a relationship, unless such action is based upon grounds described in the Act. The Act has a serious flaw, however, in that it does not address the "economic eviction" techniques that are being used extensively by many of the refiners in attempting to increase control of the retail end of the business. In addition, even if the Act were amended to deal with those practices, the length of time and great legal expenses involved in seeking legal recourse via the courts, makes it extremely difficult for the independent dealer to use such an avenue successfully.

On the second point, it is also true that a great deal of the problems faced by independent dealers can be attributed to Department of Energy regulations. However, as the domestic decontrol of oil unfolds, the DOE's allocation regulations will also be phased out, and are scheduled to expire by the fall of 1981. Thus, the government regulation aspect of the problem is basically taken care of.

Furthermore, opponents of H.R. 6722 contend that since they sell lower volumes of gasoline, the decline in the number of independent dealers is merely a reflection of their inefficiency in today's marketplace. The argument follows that prohibiting refiners from directly operating retail stations would contribute to economic inefficiencies. This position simply is not supported by the available facts. According to DOE statistics, lessee dealers, who sell much greater volumes of gasoline than open dealers (dealers who own the service station facilities), have been going out of business at a much faster rate than open dealers. Clearly, this is not a surprising development since lessee dealer costs are controlled significantly by the refiner, whereas open dealers are able to control most of their operating expenses.

We at NFIB believe there is no way of preventing these unfair trade practices without forcing refiners completely out of the retail end of the petroleum industry. Fair competition is simply not possible when a supplier competes directly with those they supply. For this reason, NFIB supports the passage of the Small Business Motor Fuel Marketer Preservation Act, which would prohibit major refiners from directly operating any retail gasoline outlets.

H.R. 6722 would also provide the proprietor of any leased service station that is offered for sale after enactment of the bill, with the right of first refusal to purchase the station. SBA loan guarantees would be made available to facilitate these transactions. In addition, dealers would be allowed to purchase gasoline from any available source, which would greatly encourage price competition at the wholesale level. All refiners, producers, and distributors of motor fuel will be prohibited from charging different prices at point of transfer to buyers who are purchasing similar quantities. This latter section will help to prevent jobbers who own their own stations, from underpricing the competitors they also supply.

In sum, we feel that this bill addresses the needs of independent gasoline marketers, and will allow them to compete on equal grounds.

Mr. Chairman, we at NFIB applaud this subcommittee for acting quickly in addressing this major threat to small business.

Mr. BEDELL. Mr. Tauke?

Mr. TAUKE. Mr. Motley, I know that NFIB generally does not take a position on legislation unless there has been a survey or a poll of membership. Have you had an opportunity to poll membership on this issue?

Mr. MOTLEY. During the last decade, Mr. Tauke, we have polled this and similar legislation three times. We polled divorcement twice and divestiture once. All three times the membership has voted in favor of divestiture or divorcement in the gasoline retail marketing. The margins have been slim, 51, 52, and 53 percent, with generally under 40 percent of the membership opposing it.

But I can say that in viewing the results of the vote, it is rather amazing to us, because every time we have posed either divestiture or divorcement as a remedy in any other industry, the membership has resoundingly defeated it. We do consider these votes to be very different and to be a fair expression, especially since we have done it three times, of the membership's opinion of the need for action in this area.

The most recent vote was in January of 1979, the membership voted 53 percent in favor of divorcement legislation, 36 percent opposed, the remainder was undecided.

Mr. **Tauke**. When we first talked about this legislation in my own small business advisory group, the vote on the issue was close to 50-50. After a discussion of the subject, the split was more like 90 to 10 in favor of this kind of legislation, so I think that many times the words "divorcement" and "divestiture" conjure up thoughts of big Government coming in and interfering with business.

Perhaps after more thought there is even greater support, but I think it is interesting to note, as you have, that this industry seems to be one where people recognize the unique circumstances.

Mr. **Motley**. I think small business people, small business owners across the country, when they get together, whether it be at the local chamber meetings, rotary, wherever they meet, sit and discuss their business problems and how their business is going.

One of the things that I have come across in talking to these types of business people over the last couple of years is there seems to be a recognition that circumstances in this industry are very different than they are in many other industries and recognition that the small gasoline station operator is not necessarily able or is not necessarily able under the present rules of the game to compete fairly or to go out and pursue his livelihood in a way that the others are.

I think there is a tremendous ground swell of support, because of 30 or 40 points difference in the vote in favor of this than the vote against any other type of divestiture. The small business community is overwhelmingly against divestiture as a remedy in any other industry. This one is much different.

Mr. **Tauke**. Thank you very much. Thank you, Mr. Chairman.

Mr. **Bedell**. Thank you, Mr. Tauke.

Thank you, Mr. Motley, for being here.

One of the questions that has come up is whether the Gasoline Marketing Practices Act and the fair trade laws are such that they give adequate protection to the small businessman in cases like this.

Has your organization had any experience with efforts to try to use the remedies that are available through our legal system?

Mr. **Motley**. We ourselves have not had any experience in that area, Mr. Chairman. But I think anyone who observes or who has observed what happens or what has been happening in the industry over the last couple of years, I honestly believe can't help but come to the conclusion that legal remedies are totally inadequate for solving the problem.

We have the enactment of the 1978 legislation, and all indications are in 1979 the number of service stations that went out of existence after the enactment of the act almost doubled, at least the rate of their going out of business doubled.

So from that aspect I would think that the 1978 act was a total failure.

Also, it would seem that the major oil companies, or at least the ones who are intent upon this course—and I would also like to stress here that we have roughly 26—excuse me. 12,000, we did have 26,000 retail gasoline marketers as members of NFIB in the early 1970's. We now have just slightly over 12,000 gas station operators as members of NFIB. This in itself is a very startling statistic because from the early 1970's to today its membership has grown from 260,000 to 610,000 firms and has grown very evenly across the board, yet we have had more than a 50-percent net decrease in this particular area, which sort of patterns what is happening in the industry as a whole.

But I would think that there are a number of major oil companies who are not pursuing this course, but those who are pursuing this course have seemed to come across some rather unique ways to go about getting rid of the unprofitable stations, the stations that they do not particularly care for.

One that we have termed, and other people have termed, economical eviction, by putting the profit squeeze on those firms so hard that they simply have to close their doors and leave is increasing rents, making them pick up maintenance of facilities, any number of other ways that they can possibly do it; making them take over the maintenance of cafeteria or restaurant operations attached to the stations if they are on interstates. All of this information came out in our earlier testimony.

We have received numerous letters from members that say that it is still going on today. The legal remedies that are available if they could deal with this situation, would certainly take much longer and cost much more money than most small business people could afford; it simply is not worth their while. So it is either get out of business or give in.

Mr. **Bedell.** I have made the point several times, that we think of our legal system as affording help for small people but frequently they simply don't have the money to afford it. For a gasoline station to go to court with a major oil company is sort of like me climbing in the ring with the heavyweight champion.

Mr. **Motley.** Even the U.S. Government can't go to court against the major oil companies. The disproportion involved in small people fighting with the U.S. Government on rules and regulations has become so bad that we now have what is called the equal access bill, one reported unanimously by this committee and has 130 cosponsors and hopefully will be adopted by the House.

Mr. **Bedell.** One thing that has seemed to come through in our testimony I would interpret as saying that small business generally is less efficient than large business, and therefore, if we do anything to restrict large business in any way, that we are increasing the cost to the consuming public.

I guess the concern I have is if that philosophy is to be bought by the American Government and American people, then Mr. Stewart's charts are inevitable. If we are willing to say that we have to go the way of big business because it is more efficient, then I see some real problems.

Have you done any work at all to compare the efficiency of—I realize small business cannot run a steel plant very well, but it appears an entrepreneur can run a gas station the same as an outside owner. Have you run studies on any of these situations where small business is not at a disadvantage because of the type of product or services offered?

Mr. **Motley**. First of all, let me say I do not think I can answer the question any more eloquently than the previous witness did. As far as to specific studies which NFIB has done on the levels of efficiency for small firms versus larger firms, I am not aware of any at this point, but if I can, I would like to go back and talk to the head of our research department and see if we do have anything we could submit for the record.

I do know that as a general feeling amongst most small business people, and it really makes no difference what industry they are in, they believe that they can compete with anybody so long as the rules of the game are the same for everybody and are applied in the same way for everybody. I think that is generally what we are looking for.

I do not know of many small business people who have shied away from vigorous competition. As a matter of fact, if you take a look at the American economy today in those areas where small business predominates, such as the number of firms in the industry, they are the most competitive sectors of the economy—retailing, services.

I think the new SBA-size standards which you probably have some familiarity with, point this out rather dramatically when they start calling a small bakery large because it has 15 employees in a highly competitive industry.

Mr. **Bedell**. Thank you very much. We appreciate your testimony.

Mr. **Motley**. Thank you, Mr. Chairman.

Mr. **Bedell**. Thank you.

Our next witness is Mr. Tony White, office of the attorney general of the State of Washington.

Would you introduce the person with you?

## TESTIMONY OF ANTHONY E. WHITE, ASSISTANT TO THE CHIEF, CONSUMER PROTECTION AND ANTITRUST DIVISION, WASHINGTON STATE ATTORNEY GENERAL'S OFFICE; ACCOMPANIED BY JACK ANDRESEN, RESEARCH ASSISTANT

Mr. **White**. This is Jack Andresen; he is my research assistant here in Washington.

Thank you, Mr. Chairman. Good morning, Chairman Bedell and Mr. Tauke and members of the staff. My name is Anthony White, and I am assistant to the chief of the consumer protection and antitrust division of the Washington State attorney general's office. I am here to strongly urge your support for H.R. 6722, the Small Business Motor Fuel Marketers Preservation Act. We believe the bill is drafted to meet an urgent need and to provide the necessary provision for an orderly transition to a more competitive, healthy national gasoline retail market. If we have any suggestion, at all for improvement of the present bill, it would be only that it may not go quite far enough. We would like to see the major petroleum companies divested not only of their company-owned stations but of ownership and most importantly of control over what are now their leased stations. This approach has been embodied in legislation proposed by the Washington attorney general to our State legislature.

I have a copy of that legislation which I will make available. [See appendix H., exhibit 1.] As you may know, the Washington attorney general's office, as well as the attorneys general in the States of California, Oregon, Arizona, and Florida have long been concerned with a perceived lack of competition in the petroleum industry. This concern is reflected in the States' major antitrust suit against the major oil companies, and by the Washington attorney general's preliminary report to the Washington State Legislature on the 1979 gasoline shortage. This report raises serious questions about the validity of the shortage in 1979 and possible motivations for it.

At the heart of our concern is our strong view that the present structure of the petroleum industry, dominated as it is by the major, vertically integrated oil companies, allows little room for meaningful competition at the retail level.

Perhaps the most dramatic illustration of this lack of competition comes from the plight of service station dealers. Like yourself, we have been subjected over the years to a large number of complaints by retail gasoline service station dealers about their relationship with the major international petroleum companies. These complaints have covered a number of problem areas, including allegations of various antitrust violations and unfair practices by the major oil companies directed toward their dealers.

We have seen numerous dealers who have suffered considerable losses. We have seen record-breaking rent increases over the last year amounting to hundreds of percent at the same time that oil company profits are setting world records and the country is fighting chronic inflation.

We have been told repeatedly of vertical price maintenance pressures on supposedly independent dealers. Nearly all of the dealers who complain of these pressures also complain that they are accompanied by threats of either lease cancellation or cutoffs in supply. And I suppose this is what gives the impetus toward our desire for complete divestiture at the retail level.

I would like to bring to your attention one of the most recent examples of such a complaint by a dealer in Washington State which illustrates the severity of the problem and the inadequacy of present remedies.

We are told that Union Oil is in the process of substantially changing the credit provisions of their contracts with dealers in our area. This isn't happening as contracts expire and new contracts are negotiated. Rather it is apparently a highly unfavorable change which is being forced upon Union's dealers commencing almost immediately.

Prior to now, Union dealers were allowed to pay for a week's tank wagon purchase of gasoline by noon the following Monday. In our experience that is certainly a shorter credit period than is common with most business relationships. After June 1, 1980, however, after only a very short notice the Union stations in our area have been required to sign an amendment to their contracts providing that a lock box be fixed to their premises and that payment for each gasoline delivery to their stations be placed in the lock box so that it can be picked up before any additional delivery will be made.

In cases when the remittance is not there the delivery may just not be made. I have with me a copy of a statement delivered to me just before I left that is signed by a local dealer. I believe there are several other dealers that are in the same boat that he is:

> On May 30, 1980, my station manager called the Union terminal at Edmonds, Wash. to order gasoline, the following statement was made to them: "We will not accept any orders nor deliver any product after June 1st because you did not sign the lock box agreement." I called several persons at Union and they told me the same thing. I contacted my attorney, Bob Alsdorph and after talking to DOE by phone went to the office of DOE.
>
> We talked to four different individuals at DOE and after about two hours Union finally agreed to deliver products. Monday morning, June 2, 1980, my manager called to order gasoline. Again Union refused to accept order for the products. I called DOE head of local enforcement, Lyle Nelson; he called Union several times and again they reluctantly accepted orders of the gasoline. I haven't gotten it yet. [See appendix H, exhibit 2.]

According to the dealers with whom I have spoken, Union has told its dealers and others that the lease amendment had to be signed or there would be no more deliveries and that if the remittances weren't in the lock box at the time of each delivery that the truck was to simply leave without making a delivery. In some cases this amounts to a $85,000 cash flow differences within a matter of a week, which some say they just can't sustain in the present credit market.

As you can imagine, this situation which occurred without warning, is creating very serious cash flow problems for many of the stations and a bookkeeping nightmare. One dealer told me that his first reaction upon hearing of this requirement was disbelief and anger—it was actually expressed in much stronger terms than that. My division chief revised my statement.

He said that he called the local DOE and the rest is what I have just read to you.

He said that he called the local Department of Energy and was told that Union activities appeared to be a blatant violation of a Department of Energy rule which states that "no supplier may require or impose more stringent credit terms or payment schedules on purchasers than those in effect for that class of purchaser during the base period or on May 15, 1973." This is a clear and blatant contradiction or violation of that statute.

You, Congressman Bedell, have already voiced your concern about the alarming fallout of lease dealers, somewhere in the neighborhood of 10 percent a year and a coincident rise of company-owned stations in certain regions. One of the shortcomings we find with the Department of Energy report prepared by Mr. Lane is the fact that it uses national figures and what we see is a takeover of stations in specific regions by the majors rather than nationally. So those figures don't reflect, since they are national statistics, what is actually happening.

That fallout is taking place in our State just as it is nationally. However, the majors are not in our State purchasing lease dealer stations. So we have that difference there, regionally.

We are very concerned about this trend and its continuance and that the relatively convenient distribution system that we now have will be dramatically altered. If the 10-percent drop in stations per year continues, of course, that day is not far from us.

It is certainly ironic that we have dealers that desperately want to hang onto their businesses and provide that service to us, and we have the most lucrative profit era for the majors by a wide margin but we still have so many lessee stations closing.

At the same time we are very concerned by the additional indications that the distribution system—and this is very important—for certain petroleum products is breaking down to the extent that insufficient competitive forces remain to insure supply to certain areas, let alone supply at a competitive price.

I spoke recently with a staff member of the aeronautics division of our State department of transportation. In fact the conversation was last week. He said they were worried about distribution of aviation gasoline supplies to airfields in more remote sections of our State. He said that the department had been working desperately on the problem for about 2 months now, but that they had got even little substantive response from the companies serving this particular market. Several airfields have been or are facing cutoffs and shutdowns.

On July 1, Shell proposed cutoffs to all flight service stations not flying the Shell brand name and that the company intended to get out of the aviation fuel business completely within a year. I presume this will, to some extent, parallel the way some of the majors got out of the fuel oil business up in the Northeast. Union Oil relies on Shell for 80 octane aviation gas. Union makes only 100 octane themselves. Union has to have both octanes to service the field. So they will be out of the area as well.

This problem appears to apply to the entire Pacific Northwest with no rural area exempt from the new difficulty.

If the petroleum companies don't want to bother with distribution to small, but important to us, specialized dealers of this sort, are we to believe there are no independent businessmen somewhere that wouldn't be willing to make those deliveries if competition were to exist in the petroleum industry? I think not.

Also, and I think this is very important to our agricultural section of our State of Washington, our aeronautics division was told by the majors that these cutoffs would not affect agricultural aviation—crop dusting, et cetera—but it evidently already is.

I think it should also be pointed out at this time that several very convincing studies have been drafted by economists such as John Phelps, Tom Ryan, as well as work by an economist working for our office and they show substantial efficiency factors favoring the independents over the majors.

These questions have been raised earlier and maybe they will be able to provide some data in that regard. The bottom line of all these studies is that the majors' marketing cost to put a gallon of gasoline into your automobile is about 10 cents. (Phelps' study) and the cost for an independent to do the same is about 4 cents.

In the studies by Patterson and Allvine, the differences are 5 and 15 cents, which are even greater. Also I might add I had a chance to review the research material in the Lane report, if one carefully examines the charts [data not in the text] efficiency factors also appear to be greater for leased service stations than the company stations. You may want to talk to John Phelps about that. He has done quite a bit of work along that line.

Another reason for divorcement and, better yet, divestiture comes from a report drafted by Dr. Richard Zerbe, an economist at the University of Washington. In his report, which will be made available to this committee, Dr. Zerbe concludes that a controlled retail or public price may be a necessary ingredient to control price fixing further upstream.

In other words it would be much more difficult to maintain the disciplines of any price fixing scheme if the present vertical integration of the major oil companies from crude oil to the gas pump were eliminated.

Even more important, however, Dr. Zerbe points out that the development of an unintegrated retail petroleum market may put the first real pressure on the majors to bring the price down. Think about it a moment. The price goes up, we think because OPEC decides that it will. The only bargaining tool for the American people vis-a-vis OPEC are the major petroleum companies. Yet when the OPEC price for crude goes up, the value of their domestic reserves goes up accordingly. What incentive do the major oil companies have to drive any kind of a hard bargain with OPEC?

Whether the majors can or cannot do anything about escalating prices right now may be an unknown, but it would certainly appear they presently lack any incentive to do so even if they could.

If, on the other hand, some hustling new innovative independent retailers began to acquire some marketpower, they might just be able to begin to ratchet price downward. In other words, "all right, Texaco, I have the 10 percent of the California retail market and Mobil is giving me 3 cents discount. Chevron says they will make it 4 cents. Can you do any better?"

That might just be the beginning of an incentive for change in the majors' posture as they do our bidding for us with the oil producing countries of the world. This would be the beginning of some pressure from somebody to bring OPEC prices downward or, at the very least, to slow the very steep price rises.

The Washington attorney general, recognizing the importance of introducing significant competitive forces into the retail gasoline market, has proposed a divestiture bill for consideration by the Washington State Legislature. This bill was given very careful consideration by the legislature and has been refined to a proposal which calls for divestiture essentially in the following four steps:

First, after January 1, 1981, it would be illegal for any major oil company to open new stations in Washington which would be owned and operated by major oil company personnel.

Second, the major petroleum companies must sell their company-operated stations by January 1, 1983. In our State, there are only 39 company-owned stations, much less than most other States.

Third, a major refiner would have to respond with a good-faith offer to sell the station to the present manager who is leasing the station, if that station manager requests such an offer before December 31, 1984. That was included in this legislation because of the present tight money situation and some of the concerns on the part of station owners that they would be able to acquire the money to purchase these stations.

Fourth, a major refiner would be able to maintain possession of leased stations after December 31, 1984, if the lessee does not exercise his option but would have to sell the station if the lease in effect on December 31, 1984, is terminated for some reason after that date.

Of course that would change the relationship between the dealer and the major owner dramatically because, if that relationship broke down and the lessee was to leave for one reason or another or was put out, then this station would go on the open market after 1984.

If this proposal does not become the basis for an initiative in our State, and it appears that it will if the legislation doesn't pass, I know it will be very carefully considered by our legislature next winter. I would urge your consideration also of its provisions as a possible source of helpful revisions to the bill before this committee, if any are contemplated.

I have one final comment to make. The petroleum companies have quite frequently, at least by inference, indicated that they are being unfairly singled out for undue interference in their business operations.

But I think we should keep in mind that the major oil companies, in many ways, are, in fact, very unique. Few American businesses, other than totally regulated monopolies, are vertically integrated from the procurement of raw materials to the consumer. I think this is a very significant fact. This is not the way America does business.

In fact, I can only think of two others—there may be others but nobody that I have ever talked to has come up with more than just these two—they are automobile tires and agricultural chemicals; and the petroleum companies dominate much of the agricultural chemicals industry, fertilizer in particular. Thus the tight control resulting from vertical integration in the petroleum industry creates unusual problems.

The impact of this industry on our way of life is also unique. Gasoline and petroleum products are at the very heart of our economy. When we consider the petroleum companies powerful influence on the coal industry, uranium industry, fertilizer industry, and the copper industry, all vital materials to our very existence and to our way of life, the implications of control and vertical integration by the major oil companies becomes even more significant.

The divestiture bill being considered by this committee would take away only a very small part of the power resulting from vertical integration of the petroleum industry. Hopefully, it is a step that will help introduce an ingredient, which I perceive to have been in short supply in that industry for some time, namely, competition.

Mr. **Bedell**. Thank you very much, Mr. White. Mr. Tauke?

Mr. **Tauke**. Thank you, Mr. White, for your extensive testimony.

I think it would be appropriate for me to comment just briefly on the divestiture proposal. It was something that the members of the subcommittee looked at quite carefully. Our major concern was the inability of the present station operators to come up with the capital necessary to be able to purchase stations across the country.

This would be a greater problem in other areas than in your State where you have so few company-owned stations. Nevertheless, I am wondering if you or the legislature has discussed that question.

Mr. **White**. That was probably our chief concern as well. When we first introduced the bill it was a divestiture bill which was to take effect in 2 years, I believe. And a number of dealers came to us and said, "I cannot get money to buy a house, where am I going to get $250,000 to buy a station?" We were told by those dealers as well, that many of the majors went to them and told them that their stations were going to cost three and four and five times that.

That caused us to revise our bill and suggest a longer period of time during which the purchase could take place. This provided the dealers a period of time to get their money together. We asked many of the station owners whether they had gone to their banks to see if financing was available. We found many of them had not done that. Some of the dealers which testified in fact had not gone to their banks to see whether they could acquire the money. Many did, even a few months ago when the money situation was much tighter than it is now and found to their surprise that they could get the money if the station was sold at a rational and reasonable price.

By reasonable price, I meant a fair market value.

We however, have left the option for the lease dealers to not have to buy the station at all and allow him to maintain a relationship with the major supplier as long as he wants it. But that remains a relationship which, upon termination, will require that that station be sold. So ultimately if those relationships break down we will have divested but it is a staged process. That is the reason that we did it that way. That was probably our greatest concern.

Mr. **Tauke**. We have heard many of the same kinds of horror stories that you articulated in the course of your testimony. We have concluded that divestiture or divorcement, alone, probably does not deal effectively with many of those situations. Does the legislation that has been proposed by your office include any measures such as the rack pricing provision or the open supply provision that is considered in this legislation?

Mr. **White**. The legislative proposal that I will submit to you does not include rack pricing. There was considerable debate within our own office about rack pricing.

Mr. **Tauke**. There probably will be in the subcommittee as well.

Mr. **White**. The arguments run this way: We would like to see the price begin to break down at the retail end. We would like to see competitive forces cause competitor to give discounts. In some cases they may not want those discounts to be generally known. They are, of course, going to run into the Robinson-Patman Act and other problems if they are given just to one person.

The dealers clearly want rack pricing. My personal feeling is that we should change it to include rack pricing so that as one of the dealers pointed out to me, "We all start at the same starting gate." I think that is fair. The impact on the jobbers is probably most significant. The question is where the jobber fits in. We have litigation in our State right now over the whole question of jobber-owned stations. Jobbers in many instances in our State get as much as a 5-cent discount. He uses that competitive advantage against his competitors in the retail market. There is some question about whether that is fair or not. The independent dealers want to see that eliminated. I suspect ultimately our bill will have language that will probably be nearly identical to yours regarding rack pricing.

Mr. TAUKE. I might comment we are having a little trouble with that language so you may want to wait until we get it more refined. The jobbers in my areas do not seem to believe the fact that major marketers are able to go to the oil companies and purchase gasoline at prices cheaper than the jobber can purchase gasoline. I do not know why that misunderstanding continues to exist. But we have had testimony from independent marketers as well as from representatives of the major corporations, that in fact they do sell at lower prices to some major marketers. If we do not have rack pricing, it occurs to me that we are putting jobbers at the mercy of independent marketers who may come in and because of their large purchasing power be able to undercut the jobbers' price on gasoline.

Mr. WHITE. Yes.

Mr. TAUKE. One more question. I understand you have had lively discussion and debate in the State legislature over this issue. Would you care to relate any of the arguments pro and con that you have experienced?

Mr. WHITE. Yes, I think that might be helpful. I might just tell you where the legislation is to give you some idea.

We submitted the bill after our legislature convened. Our legislature only lasts, a legislative session only lasts a couple of months. So things move very, very quickly. We quite frankly did not feel it would even get out of committee. In fact, it did get out of the Senate committee with I believe an 8 to 2 vote which surprised us. In rules it lost by one vote.

Given amateurish lobbying efforts that we who are primarily used to just being in the litigation arena applied to this particular attempt, I think that that was quite good. I have in front of me here—and I think it would be of some interest—the kind of arguments raised by the petroleum companies up in our State. The petroleum lobbyists were sent from California for the most part to make these arguments and for the most part they were what an attorney calls a parade of horribles—the horrible things that were going to happen if this legislation passed. I will just quickly go through it.

We were told first that if divestiture was to take place that the DOE allocation system would deprive Washington residents of gasoline supplies as the ownership of local gasoline stations were to change hands. We went to our local DOE officials and they told us that that was hogwash.

Both the regional and national officials have informed our office that the service station allocations remain with the service station location as long as the station continues to operate. Also a reopened station may be granted its old allocation if it reopens within 6 months to a year. In most cases if the station does not open within 6 months to a year, it will have already become a stereo tape sales shop or something. This routine system of reallocation has worked in the past to avoid loss of supplies to the State which would otherwise have resulted in thousands of service station closures in recent years.

We were also told that if the divestiture bill were to pass that many of the companies would simply withdraw from the Washington market.

That is equally untrue. A supplier wishing to withdraw from a marketing area is required to locate a new supplier for that market before the Federal Government will allow the firm to withdraw. An example of this situation is the recent refusal by the Federal Government to allow Texaco to withdraw from eastern Washington until a new supplier or suppliers were found. In general, continuity of operation, not ownership determines the validity of allocations to particular stations and it is on that basis that allocation is most directly made to the community. In addition to that, Washington State is the third largest market west of the Mississippi and it would be irrational business for them to pull out. Finally, we have three major refineries in the State of Washington. I suspect our legislature would have some effect on those refiners were we to be cut off from our gasoline suppliers.

We also may be told and you may be told that after divestiture credit cards would no longer be available to our citizens. We have taken a look at that and found that credit card services are in fact provided mostly by national companies in central locations. For example, National Data located in Atlanta, Ga., provides credit card services like this for Arco. In addition to that, many of the dealers and members of the associations came to us and told us they would just as soon get rid of the credit cards because they cause tremendous problems and just go to Master Charge, Visa, and so forth. I am sure there is some disagreement on that.

We were told by the oil companies that independent service station operators would not be able to finish the purchase of their stations without the support of major oil companies. We have already discussed that. We had members of the Small Business Administration testify before the committee and say they undoubtedly would be able to find money to help the lessees buy most of these stations.

And again as I mentioned earlier the dealers which had contacted local banks found they could indeed find money to purchase the stations, particularly if they had been in business for 3 or 4 years. One young service station operator came to me and said that he had run a station for 5 years and that the banker told him he was a lower risk than most of the people that came to him looking for money for new business investments.

We were told that divestiture would result in high service station attrition. High rates of dealer attrition have been a familiar feature of the retail gasoline market since the first energy crisis in 1973. You have had a lot of testimony I know, I would not go through all the facts that I have here on that. Except I would like to say you would find it interesting—and I do not know whether these publications have been made available to you yet—if not you should get one of the staff members to acquire them, the Texaco and British Petroleum market plans distributed at recent DOE hearings. Those are available from the Federal Trade Commission.

They illustrate a plan to eliminate branded dealers as a vital part of those companies' national retail policies.

We were told by the oil companies that elimination of oil company-operated stations would eliminate the companies' ability to test innovative marketing concepts; that goes to some extent to the first question, the innovation question raised earlier. We researched that historically and found that that is just simply not the case. We found that ever since World War II all of the dramatic innovation has come from independent marketers. We are all aware of the fact that self-service was introduced in Los Angeles since 1947 by the Heurich Oil Co., certainly not a major. Other concepts such as minimart associations with the gasoline stations and so forth again have been introduced by independent gasoline marketers. That particular case Autotronics. A quote from National Petroleum News magazine, states:

> * * * indeed conservative attitudes on potential rate on investments and downside risks have kept major oil companies from taking a commanding role in the C-store business, where smaller marketers may fly with a location that shows potential, majors seem to be looking for a sure thing.

We were told that divestiture simply does not eliminate brand identification. I am sorry. We were told if divestiture were to take place this would cause brand names to disappear from the market. Divestiture simply does not eliminate brand identification. Brand identification does not follow the ownership of the property but the gasoline which come out of the pump. In the State of Washington there are statutes which state that it is a false advertising practice or an unfair and deceptive practice to have pumps with the brand on the side and pump a different brand of gasoline out of the pump. Certainly matters relating to a brand identification will have to be incorporated in the bill. I think your bill does a good job in doing that. I think an analogy can be made with the national soft drink companies who supply local stores and restaurants with signs displaying the soft drink logo along with the store and restaurant names. For all we care in our State they can take down the big sign and put one up with magnetic placards displaying the brand of gasoline they are buying that week on their pump. At the present time at 89 percent octane and with very few additives in any of the regular gasolines it really does not make any difference to me which company puts the gasoline in the tank.

We were told by the oil companies that chaos would reign in the marketplace if oil companies were forced to void existing contracts. I think a response here might be significant. For a large percentage of the dealers there would be virtually no changes at all from their existing contracts. These are contractor-operator dealers who own their own station or lease property from someone other than the oil companies. The oil companies provide these dealers with products on a supply contract. According to national data such dealers represent 43 percent of the total branded dealers. In testimony before our Washington State Senate Energy and Utilities Committee an Arco spokesman said two-thirds of his firm's 313 non-company-operated stations in Washington State are contract stations. Testifying before the same committee, a Chevron spokesman said some 250 of 550 total stations within this State are contract stations.

In addition, it is interesting to note—and I believe these figures are in the company long-range plans mentioned earlier—as many as six-sevenths of the leased stations are in a leaseback status and not owned by the oil companies at all. In our State this is a very high number, and it may be even higher in other States.

This is the way this works: The oil company purchases the property, finances the construction of a building on the property. They then sell the structure or property or more likely both to a finance company or third party, then lease it back from the party who actually then owns the station.

In many instances in our State the stations which are rented from third parties by the majors are rental agreements with the third parties which are as long as are 20 years in length. We have been hearing an awful lot about—and some of the material I will make available for the record will show the kinds of increases in gasoline station rent that we have seen in our State. One set of documents that I have here from one station manager indicates that his rent has gone from $100 to $1,600 a month in one jump. In other instances from $30,000 a year to $70,000 upon termination of the present lease. These are properties which, as I mentioned, may be rented for the same premises as long as 20 years on a stable basis by the petroleum companies in some cases.

We were told divestiture would result in fewer suppliers of gasoline in Washington State.

Of the seven refiners who will be affected by this bill, only Chevron and Union bring product to Washington from outside the State. Arco, Texaco, Mobil, and Shell produce their gasoline at Puget Sound refineries and Exxon gets its gasoline from Shell on an exchange agreement.

We were told increased rents demanded by oil companies provide a method to circumvent Federal price controls. By this means, the companies increase the rent, or revenue to themselves, forcing the dealers to go to the Federal Government and acquire rental increase passthroughs, which drive up the cost of gasoline at the pump or other goods and services they sell.

Another impact of this approach is to squeeze the dealers' margin as they absorb some of the rental increase. In many cases, the companies have long-term lease agreements with third parties. The companies pay relatively little to the actual property owner, but continue to increase the rent the dealer pays. That is not, of course, true for all the stations but it is true for some.

We were also told that there would be price fixing in the retail market if the major oil companies are not present.

The Washington State Attorney General's Office, along with five other States, has found it necessary to file a massive antitrust suit against the major oil companies alleging, among other things, that they have engaged in fixing the price of gasoline. Any antitrust violations by independents which might occur after divestiture will be vigorously pursued by our office. That is much less difficult than taking on companies which have net worths which are the size of rather large countries.

They told us that any difficulties encountered by lessee dealers in their relationship with the major oil companies can be solved under the Federal "Dealers' Day in Court" Act.

According to Jack W. Houston, however, who I believe is here with us today, acting executive director of the Service Station Dealers of America:

> The Dealer Day in Court Act has been effective in solving problems arising from abusive terminations of leases or failure to renew leases by the major oil companies. However, the Federal statute does not address the "economic eviction" methods the companies have now adopted.
>
> These methods include such practices as rental increases, selling in competition with a station through a company-operated station with a lower rack (wholesale) price, and passing along maintenance costs not formerly paid by the dealers.

Dealers have also complained that the oil companies have reduced allocations to dealers and shifted the balance to their own company-operated stations.

The present situation that we have includes statements by the major oil companies that we have higher stocks of petroleum, both crude and product, than we have had in the history of our country, yet the prices have seemed to be stabilized at a high level and possibly going higher. I heard that I picked up a copy of Lundberg Letter, which showed dealer prices were coming down somewhat. I thought possibly the law of supply and demand was indeed working at the other side of the spectrum. However, I talked with dealers and asked them whether or not dealer tank wagon prices were coming down and all the dealers I called, over a dozen representing most of the companies, indicated that it had not happened at all but there was tremendous pressure on them to lower their margins. Some were given placards to put up, and things like that. The placards were from Arco and the other majors.

So what we may see in the Lundberg Letter as a slight decrease of a penny or so at the pump does not appear to be caused necessarily by the pressure of the high supply that we have right now, but rather by a squeeze on the margin that the dealer has been enjoying for the last couple of years.

Mr. **Tauke**. Mr. White, that certainly was a very comprehensive and complete answer to the question. Perhaps you may want to submit some of your notes for the record.

I might note that I was in the Omaha-Council Bluffs area over the weekend and noticed there is something of an old-fashioned gas war occurring in that part of the country. I was curious as to how that could occur under DOE regulations that seemed to prohibit that sort of thing. Apparently it is occurring primarily among nonbranded dealers.

Mr. **White**. I have something here that goes right along with that comment, Mr. Tauke. You just opened up another Pandora's box, I guess.

These charts were prepared for our litigation. They show the price wars that occurred continually up until August of 1972. This chart starts in 1966 and continues up through 1977. This happens to be a Los Angeles chart. This is price, over time. The bottom line represents the price of regular sold by the independent stations and the top line represents the price of regular sold by the major brand stations.

You will notice that those price wars stop instantly during the week of August 15, 1972. That is sort of interesting in and of itself. The economists have been fascinated by the phenomena that we have here.

The more interesting thing yet, though, is to take a look at what happens in other cities. Basically what we found was that in all of the other cities or nearly all except White Plains, N.Y., and in Washington, D.C., where the phenomenon occurred at a different time, all of the price wars stopped during the week of August 15, 1972, except for possibly the ones you are seeing right now.

In fact, something even more interesting happens if we lay this Seattle acetate over the Los Angeles market. The Los Angeles market and the Seattle market have to be very different—the lifestyles, the layout of the cities, our continual rain, now Mount St. Helens and all the rest of it created a very different market situation.

Those charts lay absolutely on top of each other. You can hardly get a pencil between the market activity in Los Angeles and the market activity in Seattle, Wash. That continues only adjusted for a tax increase right up through the period of the chart.

These are average prices. Now we want to take a look at the disaggregations of those charts. For Seattle, here are the majors, and all lined up on top of each other. As you can see, any variability of the price between them is virtually nonexistent. The companies depicted on these charts that I have just shown you are Arco, Chevron, Exxon, Mobil, Phillips, and Shell. I have now added Standard, Texaco, and Union. It does not make any difference at all. They track each other absolutely.

If you take the independents away from Portland, we find exactly the same phenomenon. If we add the independents, we get something like the mishmash of a more competitive market. If we take a giant market like Los Angeles, we find precisely the same thing.

Where we have a market with a lot more independents, you get something which is less like one line.

This is Tucson, Ariz. If we take the majors off, we get something again very close to one line.

I hope the charts are going to change.

Mr. **Bedell.** If the gentleman would yield. In your charts you have the major oil companies and the independents.

Mr. **White.** That is correct.

Mr. **Bedell.** Which tend to have the lower prices.

Mr. **White.** The independents have the lower price across the board.

Mr. **Bedell.** How does that stand with the testimony we had that said, look, if you eliminate the majors from this competitive market you are not going to have the same competition?

Mr. **White.** Not unless the petroleum people want us to pay more money and feel that is more efficient. I agree.

Mr. **Tauke.** The chairman has been very indulgent. Thank you, Mr. Chairman, and you too, Mr. White.

Mr. **Bedell.** I have one question. You mentioned just recently when you were answering questions that there are some States which allege there is anticompetitive pricing by the major oil companies. Those are suits that are now in place, are they?

Mr. **White.** Yes.

Mr. **Bedell.** That is, with the U.S. Department of Justice?

Mr. **White**. No, they are suits that have been brought by the States of Washington, Oregon, California, Arizona, Connecticut, and Florida.

Mr. **Bedell**. Isn't the Department of Justice joining in on those cases?

Mr. **White**. They are not involved.

Mr. **Bedell**. Have they shown an interest?

Mr. **White**. I have had one visit by one member of the Department of Justice to our office. We submitted this report that I mentioned earlier to Mr. Shenefield back in August of 1979. We were very disturbed about what we saw happening in 1979. We were all working, of course, in the framework of the period of time from 1970 to 1974, and basically this report was all done just on our own time so we could ventilate to someone what we thought was happening.

We were quite discouraged when the Justice Department came out with its preliminary report, and particularly, when I talked to the staff people working on the Justice Department investigation and learned that the report, had not been passed down to them for their consideration.

Mr. **Bedell**. You also indicated that in your area one of the oil companies changed the terms or required lessee to change the terms of their leases. Apparently, according to your testimony, the Department of Energy regulations say:

> * * * no supplier may require or impose more stringent credit terms or payment schedules on purchasers than those in effect for that class of purchaser during the base period (for seasonal credit), or on May 15, 1973.

I guess it would appear this was a clear violation of that DOE regulation?

Mr. **White**. It would appear so.

Mr. **Bedell**. My question is, how aggressive has DOE been in working with you to try to see that that regulation was enforced?

Mr. **White**. As you can see by the fact I have scratched out a line there, I had the impression that they were not very effective. I had a telephone call last night however and received this letter from Mr. Blanton, who is the complaining oil dealer, and he told me that they had moved in rather forcefully, so I was very happy to see there was some rather quick action by DOE in this particular case.

Mr. **Bedell**. So DOE has now moved into that?

Mr. **White**. It would appear that it has. I am gratified to see that.

Mr. **Bedell**. I take it that with the Department of Justice you have been somewhat disappointed?

Mr. **White**. That is correct. It is a situation which we just simply don't understand.

Mr. **Bedell**. You don't understand why they are not more interested?

Mr. **White**. That is correct.

Mr. **Bedell**. I have no further questions.

Mr. **Tauke**. Mr. Chairman.

Could you tell us what the status of the case is?

Mr. **White**. It is in discovery at this point. We have taken most of the third-party documents and we are just proceeding to take the defendants' documents, and the depositions for the most part have not been conducted. Ten depositions have been taken thus far.

Mr. **Tauke**. What kind of timeframe are you looking at?

Mr. **White**. It will probably be at least 2 years before trial.

Mr. **Tauke**. Thank you.

Thank you, Mr. Chairman.

Mr. **Bedell**. I do have one more question. You indicated a study which apparently implied that the independent marketers, small business people are more efficient than large operators; is that correct?

Mr. **White**. It would appear that is the case, yes.

Mr. **Bedell**. How do we get that information? Because we had testimony just the opposite yesterday.

Mr. **White**. I will see that you get it immediately.

Mr. **Bedell**. We had economists who yesterday indicated just the opposite. If you have that, I think it quite important that we get that, or your analysis of DOE reports.

Mr. **White**. Yes.

[Material referred to is being retained in subcommittee files.]

Mr. **Rovner**. The Federal Trade Commission is involved in the investigation of the major oil companies. Are they working with the attorneys or at least with the plaintiffs?

Mr. **White**. Yes, they are. We have had excellent cooperation from the economics section of the Federal Trade Commission. In particular I would like to commend Mr. John Phelps, who has been very helpful to us.

Mr. **Bedell**. Thank you very much. We certainly appreciate your testimony.

Our last witness is Mr. John Oster, American Energy, Inc., Foreman, N. Dak

Your entire testimony will be inserted in the record. We would encourage you to summarize what you can, and introduce the person you have with you at the table.

## TESTIMONY OF JOHN OSTER, AMERICAN ENERGY, INC., FOREMAN, N. DAK.; ACCOMPANIED BY JOE JOHNSON, LEGISLATIVE CONSULTANT

Mr. **Oster**. Thank you. I have Mr. Joe Johnson with me. They are our legislative consultants for American Energy, Inc.

Mr. Chairman and members of the subcommittees, I am John Oster of Ethan, S. Dak., and I am here today representing the Board of Directors of American Energy, Inc. (AEI), of which I am a member.

AEI is one of a six-cooperative consortium formed to build plants to manufacture fuel-grade alcohol from grain. The six cooperatives are located in North Dakota, with membership in Minnesota and South Dakota; in Texas, with membership in Texas and New Mexico; and in Kansas, with membership in Kansas and Colorado.

As farmers, our cooperative members are dedicated to receiving a decent price for our commodities. In producing alcohol from grain, we feel that we can get a fair price as well as contributing in a very real way to America's independence from foreign oil supplies.

The problems that will be facing the U.S. agricultural community in the 1990's will be changing from those problems experienced in the past. The concerns about excess capacity and surplus production will change to concerns about rising production expenses and efficient use of land, water and energy resources.

Mr. Chairman, according to a study done recently by Chase Econometrics, decreasing yields and 17 to 25 percent increases in energy-related items such as fertilizers and fuels, combined with a 23-percent increase in interest costs, will have a dramatic impact on crop cost of production in 1980.

Corn production cost, per bushel excluding land cost, increased 20 percent in 1980 over 1979. Cost per bushel, including land cost, is projected to increase 17 percent.

According to the current draft figures from the U.S. Department of Agriculture, grain sorghum cost of production per bushel for 1980 will increase 20 percent also.

Mr. Chairman, land values have quadrupled in the last decade. Inflated land values, cost of machinery and livestock are making it almost impossible for the American farmer to remain in business. Our outflow is not on balance with our income, therefore making our operating costs per year much more difficult to obtain.

Net farm income in 1980 is forecast to drop from about $32 billion to less than $25 billion in current U.S. dollars. The total purchasing power of this net income in consumption goods would be the lowest in the past two decades and the number of farm families will be the smallest.

In January of this year, President Carter announced his program to quadruple gasohol production capacity in the United States by the end of 1980. According to the President's program, from mid to late 1981 we will become capable of producing ethanol at an annual rate of 500 million gallons.

Mr. Chairman, our six cooperatives, depending on plant sizes, could have the capability of producing 300 million of those 500 million gallons per year.

AEI and the five other alcohol cooperatives in the consortium each plan to build plants of 50 to 60 million gallon annual capacity. We will market the alcohol which will be blended with gasoline as gasohol. With the recently enacted 4-cent-per-gallon Federal excise tax exemption for gasohol, a provision of the windfall profit tax bill, gasohol approaches being competitive in the marketplace.

Mr. Chairman, considering the fact that you are one of the foremost proponents in the Congress for gasohol, I will not belabor the attractiveness and feasibility of the product, except to say that our members are committed to this project and are doing our part to help enable America to become energy independent in this decade.

I am here in support of H.R. 6722, the Small Business Motor Fuel Marketer Preservation Act, and feel that the provision in the bill that addresses open supply is an excellent legislative provision, and will help let gasoline dealers market the gasohol that they need to fulfill their obligation to their customers.

Certainly, a point in favor of this legislation was made by Mr. Herb Staretz of Passaic, N.J., who, because of his lease obligation to the Mobil Oil Corp.—which does not market gasohol—was denied the right to market gasohol. And because of his refusal to comply, was notified on April 24, 1980, that his franchise would be terminated. For trying to ease the Nation's dependence on foreign oil, Mr. Staretz could be out of business by July 31. This unfortunate set of circumstances can and will continue to happen unless the Congress can put some checks on the major oil companies that will allow the small dealer more autonomy in his purchasing rights.

We, as farmers, are not at all sure that gasoline and diesel fuel are in as short supply as we have been led to believe. As the price of gasoline goes up, adequate supplies seem to be available. It is the opinion of the AEI board that when the price is high enough there is plenty of fuel available to us as farmers. The Mobil Oil Corp. is certainly not the only culprit, but their actions in terminating franchises could lead the American public to the conclusion that gasohol is not acceptable as an alternative to conventional fuel.

Under the free enterprise system, the farmer competes daily in the marketplace. He is happy with the independence it provides him. This country was founded on this free enterprise system and it appears that the oil companies are now trying to totally control what can be sold in their franchise stations. This is, in effect, a restraint of trade.

The Commodity Credit Corporation's bill for grain storage in fiscal year 1979 was $72.5 million. It follows that the use of stored grain to manufacture fuel alcohol would be a saving to the Federal Government as well as a financial boost to the farmer. Low prices for farm commodities cause the farmer to put greater stress on his marginal lands. If the cost/price squeeze was not so great, the farmer would not have to place this kind of stress on his marginal property. Agricultural crops are the most convenient and readily available source of renewable energy known to man, as a true source of solar energy, the Sun, the rain, and the wind.

Mr. Chairman, I would like to briefly address the food versus fuel question that has come up regarding the manufacture of fuel from grain. The farmer's grain commitment for fuel would have very little effect on the Nation and the world. The problem of malnutrition in certain countries of the world is caused by a lack of protein—not starch. Starch is the element in grain that is used in the manufacture of alcohol, distiller's dried grains (DDG), a byproduct of the alcohol distillation process, are high in protein. The exportation of protein-rich DDG instead of whole grain would eliminate the need for Federal inspecting and grading that is now applied to the export of whole grains.

The question of the net energy balance with respect to grain alcohol production has been one of the major arguments against the production of the fuel. Positive net productivity can be attained. It requires elimination of high-grade fuel—natural gas or fuel oil—input to the alcohol production process. In the context of U.S. agricultural practices, approximately 0.35 to 0.60 gallon of new high-grade fuel—alcohol—is then created per gallon of gross—low-grade—fuel. Mr. Chairman, let me state here that our alcohol plants will utilize coal as our energy source in the production of fuel-grade ethanol.

Mr. Chairman, the fact that I came here today from South Dakota tells you how important my group and I believe this legislation to be. This bill will be instrumental in aiding alcohol producers to market their product and will get the gasohol to the pump. It will not only give the American consumer a choice, it will provide a market for an alternative fuel that can help in the United States effort to become energy independent.

We believe in gasohol. We believe we are in at the beginning of a major new industry in the United States. We are backing up our belief with our money and our crops. We can produce the alcohol, and we can produce it in large quantities.

We don't, however, have control of the marketplace. We know the public will buy our product, if it is offered to them. But capricious actions like the one which led you to introduce this bill would deny gasohol to the consumer, and therefore deny us our marketplace.

The only obstacle which can prevent this new gasohol industry from growing into the major industry you and I know it can be would be the denial of our product to the customer.

You are right to strike immediately at this threat to our marketplace. Tell us how to help you pass this bill, and we will do whatever you ask. I thank you for this opportunity to appear before your committee. If you have any questions, I would try to answer them.

Mr. **Bedell**. Thank you very much, Mr. Oster, for being here. The two tables you have furnished the subcommittee will be made part of the record.

[Tables referred to follow:]

## Appendix A

### TABLE 22.—CROP PRODUCTION COST BUDGETS IN CORN BELT AND LAKE STATES

| | Cost per bushel | | Percent change |
|---|---|---|---|
| | 1979 | 1980 | |
| Corn: | | | |
| Interest | $0.03 | $0.04 | 18 |
| Chemicals | .07 | .09 | 28 |
| Fertilizer | .32 | 41 | 28 |
| Fuels | .07 | .09 | 28 |
| Drying | .09 | .12 | 33 |
| Other variable costs | .34 | .38 | 12 |
| Machinery | .27 | .31 | 15 |
| Other fixed cost | .23 | .27 | 17 |
| Total cost (excluding land) | 1.42 | 1.71 | 20 |
| Total cost | 2.00 | 2.34 | 20 |
| Soybeans: | | | |
| Interest | .05 | .06 | 18 |
| Chemicals | .22 | .26 | 19 |
| Fertilizer | .10 | .14 | 40 |
| Fuels | .21 | .30 | 48 |
| Other variable costs | .86 | 1.00 | 16 |
| Machinery | .79 | .95 | 20 |
| Other fixed cost | .47 | .56 | 19 |
| Total cost (excluding land) | 2.70 | 3.28 | 21 |
| Total cost | 4.79 | 5.75 | ... |

## Appendix B

### TABLE 1.—SUMMARY OF U.S. AVERAGE PER PLANTED ACRE AND PER UNIT PRODUCTION COSTS, MAJOR CROPS, 1978–80

| | Cotton (pounds) | | | Corn (bushels) | | | Sorghum (bushels) | | | Barley (bushels) | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1978 (final) | 1979 (preliminary) | 1980 (projected) | 1978 (final) | 1979 (preliminary) | 1980 (projected) | 1978 (final) | 1979 (preliminary) | 1980 (projected) | 1978 (final) | 1979 (preliminary) | 1980 (projected) |
| Per planted acre: | | | | | | | | | | | | |
| Variable | $172.03 | $200.26 | $231.69 | $97.79 | $111.89 | $139.00 | $51.87 | $64.08 | $80.96 | $48.30 | $55.68 | $68.90 |
| Machinery ownership | 56.05 | 68.16 | 84.46 | 30.83 | 37.91 | 46.99 | 29.34 | 37.36 | 46.23 | 27.66 | 34.01 | 42.07 |
| Overhead | 8.38 | 9.27 | 10.51 | 7.18 | 7.92 | 8.98 | 6.69 | 7.37 | 8.36 | 7.95 | 8.89 | 10.08 |
| Management | 23.65 | 27.77 | 32.67 | 13.58 | 15.77 | 19.50 | 8.79 | 10.88 | 13.56 | 8.39 | 9.86 | 12.10 |
| Total | 260.11 | 305.46 | 359.33 | 149.38 | 173.49 | 214.47 | 96.69 | 119.69 | 149.11 | 92.30 | 108.44 | 133.15 |
| Land: | | | | | | | | | | | | |
| Current | 54.61 | 69.55 | 75.42 | 86.34 | 107.38 | 123.47 | 36.22 | 46.24 | 49.70 | 52.50 | 65.72 | 80.47 |
| Acquisition | 37.90 | 47.14 | 46.87 | 48.97 | 58.89 | 61.61 | 23.92 | 30.15 | 29.15 | 26.35 | 31.36 | 36.75 |
| Per unit: | | | | | | | | | | | | |
| Variable | .441 | .393 | .467–.567 | .97 | 1.03 | 1.30–1.52 | .97 | 1.04 | 1.37–1.63 | 1.06 | 1.16 | 1.47–1.68 |
| Machinery ownership | .144 | .134 | .170–.207 | .31 | .35 | .44–.51 | .55 | .60 | .78–.93 | .60 | .71 | .90–1.03 |
| Overhead | .021 | .018 | 0.21–.026 | .07 | .07 | .08–.10 | .13 | .12 | .14–.17 | .17 | .18 | .22–.25 |
| Management | .061 | .054 | .066–.080 | .14 | .14 | .18–.21 | .17 | .18 | .23–.28 | .18 | .21 | .26–.30 |
| Total | .667 | .599 | .724–.880 | 1.49 | 1.59 | 2.00–2.34 | 1.82 | 1.94 | 2.52–3.01 | 2.01 | 2.26 | 2.85–3.26 |
| Value of byproducts | .093 | .096 | .089 | NA | NA | NA | NA | NA | NA | .11 | .11 | .12 |
| Land: | | | | | | | | | | | | |
| Current | .140 | .136 | .167 | .86 | .98 | 1.24 | .68 | .75 | .91 | 1.15 | 1.37 | 1.84 |
| Acquisition | .097 | .092 | .104 | .49 | .54 | .62 | .45 | .49 | .54 | .57 | .65 | 84 |
| Average renter cost | .806 | .720 | .946 | 2.12 | 2.25 | 3.04 | 2.53 | 2.67 | 3.76 | 2.82 | 3.15 | 4.25 |
| Yield | 390 | 510 | 408.5–496.2 | 100.5 | 109.2 | 91.5–107.3 | 53.2 | 61.6 | 49.6–59.2 | 45.8 | 47.9 | 40.9–46.7 |

Mr. **Bedell.** We do have a quorum call on the floor of the House, so we will try to finish up if we can. It would be good to go to lunch before 2 o'clock for a change.

First of all, I want to commend you for your interest in this work. I guess you know my interest in the particular field you are involved in. One of the purposes of this legislation, frankly, is to make it possible for those dealers who wish to market gasohol or similar products to be able to do so without being restricted.

I really have no particular questions other than to commend you for your work. I am delighted to know you are moving forward with plans for increased production. It makes it clear to me this is our real need in regard to alcohol and fuel. I am confident as we increase our production we will also improve our efficiency. There have been some very exciting studies—you may be aware of them—which indicate we can take roughly half the corn we feed the cattle, and extract the alcohol with no loss in the feed value we have from that corn—that is conservation.

Do you have any questions?

Mr. **Rosenberg.** One quick question, Mr. Chairman.

The Texaco Co. here in the metropolitan area is marketing gasohol at about 6 cents above the retail cost for regular unleaded. The dealers that I have talked to seem to indicate they are still selling the stuff as fast as they can get it in. Is this a nationwide situation? Do you have any studies that you have done on consumer demand for the product?

Mr. **Oster.** Yes; we have employed a management consulting firm, A. D. Little, of Cambridge, Mass. They have done a very extensive study on the feasibility of ethanol production of the grain and also in the market, and there is a ready market available out there.

We do have a few stations in my home area who market gasohol. There is quite a preference for the gasohol because of better engine performance and better mileage.

Mr. **Bedell.** We really appreciate your being here. We appreciate your work in something that at least the chairman feels is very important to our whole society. Thank you very much for your testimony.

The subcommittee is adjourned.

[Whereupon, at 12:30 p.m., the subcommittee adjourned, to reconvene subject to call of the Chair.]

# APPENDICES

## Appendix A.—Additional comments by FTC staff re: DOE's Title III Report

COMMENTS OF THE BUREAU OF ECONOMICS,
FEDERAL TRADE COMMISSION,
ON

## PART 1 -- THE STATE OF COMPETITION IN GASOLINE MARKETING; THE EFFECTS OF REFINER OPERATION AT RETAIL

A Study Prepared by the Office of Competition,
U.S. Department of Energy, as Required by Title III
of the Petroleum Marketing Practices Act

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Bureau of Economics
Federal Trade Commission

June 1980

(The views expressed are the authors' and do not necessarily represent those of the Federal Trade Commission nor of any individual commissioner.)

The Department of Energy has published a report entitled "Part 1 - The State of Competition in Gasoline Marketing; The Effects of Refiner Operations at Retail". This report is the first part of a study required by Title III of the Petroleum Marketing Practices Act examining possible subsidization of retail or wholesale motor fuel operations. The act directs that the study is to be done by "/‾t_7he Secretary of Energy, in consultation with the Chairman of the Federal Trade Commission and the Attorney General and other agencies as the Secretary deems appropriate." As part of this process of consultation, the staff of the Bureau of Economics of the Federal Trade Commission offers the following comments on the DOE report.

Our first concern relates to the report's claim that it analyzes competition in gasoline marketing. It does not. Rather, it looks at changes in the relative importance of different types of gasoline retail outlets and attempts to determine the causes of these changes. Specifically, DOE is seeking to determine whether cross subsidization of the retailing operations of integrated refiners is responsible for the changes which have occurred. Cross subsidization means that a firm -- refiners and jobbers are the types of firms most often mentioned -- is operating its retail operations in such a way that it is losing money on them. The losses on the retailing operations are made up from profits earned elsewhere. Presumably, the motivation for such behavior is to drive competitors out of the retail market or to keep competitors from entering. Once competitors are forced to exit or are successfully deterred from entering, the firm or firms which remain in the market can raise the price they charge and reap monopoly profits. Additionally, major refiners could be motivated to engage in a predatory strategy at retail since such a strategy, if successful, could reduce the competitive viability of independent refiners.

The alternative hypothesis examined by DOE is that the observed changes in the organization of the retailing segment are the result of changes in the relative costs of building different types of stations. Specifically, DOE argues that increases in the cost of land and in the cost of constructing a station have made high volume "gas and go" operations relatively more efficient. Thus, while low volume stations which also provide minor mechanical repairs may have been the most efficient type of station ten or twenty years ago when land and construction prices were lower, the high volume station may be the most efficient at today's cost.

It may appear that the issues of competition versus monopoly and of cross subsidization versus efficient adjustment to changed circumstances are really the same. However, this is not the case. It is true that predatory behavior or subsidization of one line of business with profits earned in another line would be expected only if a firm or group of firms has monopoly power or expects to obtain market power in the area they are subsidizing. If this were not true, the firm or firms would be sacrificing current profits without the expectation of being able to earn higher profits in the future. Such a strategy would not be rational.

However, the suggestion that changes in relative costs will induce changes in the organization of the retailing segment of the petroleum industry only if the industry is competitively structured is false. Certainly such behavior would be expected in a competitive industry. Failure to adopt the most efficient means of distribution would cause a firm in a competitive industry to lose money and, in the long run, be driven out of business. However, such cost minimizing behavior may also be found in industries with only one or a few competitors. If a firm can reduce its current costs, it will increase its current profits. This is as true for a monopolist as for a competitive firm. While a firm with market power may choose to forego current profits in order to increase its future profits, it may also choose to maximize its current profits. Cost minimizing adjustments may be found in either a competitive or a noncompetitive market. Thus, predation is not expected in a competitive industry. However, the absence of predation does not mean an industry is competitive.

The issue analyzed in the DOE report, then, is not whether the petroleum industry or the retailing segment of the petroleum industry is competitively or monopolistically structured. Normally an analysis of the state of competition in a market would examine such issues as whether the firms in the industry are earning excess profits and whether or not entry into the industry is difficult. An analysis of concentration and whether there are enough firms in the industry to promote effective competition is usually included as well. Behavioral issues such as how prices are set in the industry and how much advertising or research and development firms in the industry undertake would also be analyzed. In addition, a competition analysis might examine whether special features of an industry -- such as the large number of lessee dealers operated by the major refiners prior to 1972 -- is a result of a fewness of firms in the industry or the form competition takes in the industry. These issues are not analyzed in the DOE report.

As has been noted, DOE hypothesizes that changes in the retailing segment are either the result of changes in the cost of building various types of stations or the result of cross subsidization. While the authors are properly cautious about drawing conclusions based on data for only one SMSA and suggest that the petroleum regulations have had major impacts on the structure of the retailing segment, the fact that the data examined appears inconsistent with the cross subsidization hypothesis must suggest that the authors believe what has happened represents efficient changes in response to changes in costs. While such a hypothesis has much appeal to an economist and may well be the correct explanation, there are certain issues not considered in the DOE study which need to be explained before the hypothesis is fully accepted.

The first problem relates to the profitability of dealer operated stations, the most significant type of retail operation prior to 1970. A theory of rational adjustment to cost changes would be much more persuasive if it could be shown that dealers were profitable before 1970 but are not profitable today. This does not, however, appear to be the case. The report does conclude that refiner-owned conventional stations operated by salaried personnel appear to be a marginal investment. However, the report also suggests that this was true in the 1950's and 1960's.

Turning to the issue of lessee dealer profitability, data on two measures of the profitability of this segment are contained in the DOE report. The first measure looks at the net margin earned on gasoline sales. That is, the cost of selling gasoline is subtracted from the price at which gasoline is sold. Using this measure, conventional lessee dealers appear to be losing money. This might suggest that standard economic forces are responsible for the relative decline of the lessee dealer.

However, the amount of money a dealer makes on his gasoline sales is not the relevant statistic to consider in evaluating his financial health. Conventional gasoline stations provide other services in addition to gasoline sales. The question which must be examined is whether a conventional station makes money on the total of all its operations, not just on one segment.

Indeed, how profitable any single line of business appears to be will depend on how costs are allocated to different lines. If DOE had employed a different allocation scheme, gasoline sales might have appeared to be very profitable.

When the DOE report looks at the total operations of lessee dealers, they find them to be profitable (see Table 3.4). Thus it is not immediately apparent why such dealers should be disappearing if the cause is changed costs of operation.

There may be explanations for the observed profitability data which are not inconsistent with the DOE hypothesis. However, these need to be examined. Probably the most significant source of revenue for a conventional gas station, in addition to gasoline sales, is minor mechanical repairs. It may be that the average conventional outlet which remains in existence today is doing more of this mechanical work than was done by the average station ten or fifteen years ago. This might be expected since there are fewer stations to do this work. As a result, a dealer may be getting more of his total revenue from mechanical repairs and only be profitable because of this increased volume of mechanical work. If the number of lessee dealers had not declined, most of them might be losing money today.

The hypothesis advanced by DOE also fails to explain why only major refiners adopted the low volume lessee dealer strategy if this was the most efficient way of marketing gasoline in the

1950's and 1960's. 1/ Indeed, no real analysis of the pre-1972 situation is included in the DOE report. The only discussion of this earlier period is a survey of allegations of cross subsidization which have been advanced by various other writers. While it may appear that changes since 1972 reduce the interest in the pre-1972 period, an understanding of that period could help in understanding the current situation.

A major portion of DOE's empirical analysis examines the netbacks from refiner retail operations. The netback is defined as the retail price less the costs of running a retail operation. If a refiner's netback from retail operations is greater than the price at which he sells gasoline at wholesale (referred to as a positive netback), the study concludes that the refiner is not subsidizing his retail operations. Conversely, if the netback is less than the wholesale price (a negative netback), the authors conclude that there is at least the potential for cross subsidization. In this case, the authors of the study would look further to consider the effect of this firm's pricing policy on competition. If they found that the firm was charging relatively high prices they would conclude there was no adverse impact on competition and that the refiner's retail operations were just inefficient. However, if the

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1/ One possible explanation is that a certain minimum size of operation was necessary to make this form of organization profitable and that this minimum size was obtained only by major refiners. Alternatively, it could be that the major refiners have oligopoly power and chose to operate large numbers of lessee dealers as a form of non-price competition or as part of a strategy to limit the growth of other firms in the industry.

refiner was charging a low retail price and running a high volume of gasoline through his company stores, the authors would conclude that the refiner was engaging in predatory behavior and attempting to drive his competitors out of business.

There are several problems with this approach, particularly given the way it was employed by DOE. First of all, DOE's estimates of the costs of retail operations do not seem to include all of the expenses which could be avoided if the refiner did not engage in retail operations. One important cost omitted by DOE is depreciation which they left out because different firms used different depreciation methods and, as a result, the data were non-comparable. There may well be other costs associated with retail operations, such as the cost of carrying inventories and the cost of management services provided by corporate headquarters, which are not included as well. The failure to include these costs may mean that some netbacks which appear to be positive are in fact negative. Thus one may be lead to reject predation too easily.

While including such costs could be important, it is also extremely difficult. Depreciation costs could be taken from corporate records. Such records, however, reflect book value of assets rather than the value which could be realized if the assets were sold. Determination of the value of other omitted costs would also be extremely difficult. Thus, exact corrections for these problems seem infeasible. However, the report might be strengthened by an analysis of the general magnitude of these costs. If it was known that costs which are not included amount to one-half to one cent per gallon for a certain sized station, this could greatly aid the interpretation of the reported netbacks.

A second problem with the netback analysis relates to the authors' conclusion that a retail operation with a negative netback but a high price does not pose a threat to competition. This would be true, in an unregulated market 1/, if the services provided by all retailers were the same. If this is not true, it is possible for a retailer providing a high quality of service to predate while charging a price which, while relatively high, is not high enough to compensate for the additional services he provides. In order to reject this possibility it is necessary to find that the retailer's market share has not been increasing.

A final problem with the study's analysis of predation is that the authors of this study conclude that predation is not occurring if they find that company operated retail outlets have positive netbacks. What that means is that the company stores are not charging prices below what it costs them to sell gasoline. However, in this market selling below cost is not the only predatory strategy available to a refiner. In many cases refiners own the conventional stations and lease them to dealers who operate them. In such an arrangement, the refiner has control over a significant

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1/ Caveats resulting from the DOE price and allocation regulations are discussed below.

portion of the dealer's operating costs, his rent. If the refiner wanted to drive the lessee dealer out of business, he could do so by increasing the rent the dealer is required to pay as well as by going into direct competition with the dealer for retail sales and charging a predatorily low price.

It is important to note, however, that increases in rental charges to lessee dealers or changes in the way these charges are levied are not necessarily evidence of predatory behavior by a refiner. The opportunity cost of holding land and of owning service station facilities has risen over time and increases in dealer rental charges to reflect these cost increases are to be expected. What must be done in order to test for the possibility that rent increases are being employed predatorily is to compare the rental payments made by lessee dealers with those made by other similar businesses in the same locality.

Incomplete data poses another potential problem for the DOE study. While DOE attempted to obtain data from all retailers in the Fort Wayne, Indiana area, not all retailers responded. And, some of those who did respond provided data which was not usable. If respondents were aware of the purposes for which the data were being collected, it is at least possible that firms who failed to answer or who provided unusable data did so because they did not want to disclose that they were involved in predatory conduct. Hopefully, DOE will be able to follow-up with firms who fail to respond fully in preparing part two of the study.

Another shortcoming of the Department of Energy's report is its failure to integrate the effects of the price and allocation regulations which currently govern the petroleum industry into much of the analysis. Any attempt to explain behavior in the petroleum industry in the period since 1972 must consider the effects of these regulations. The DOE study considers the effects of the regulations in a separate chapter, but does not integrate regulatory effects into the bulk of the analysis. Based on the expertise developed by the staff of the FTC's Bureau of Economics in an ongoing project to analyze the effects of these petroleum regulations, it appears that this type of an approach can lead to serious mistakes in interpretation.

For example, the current regulations may substantially reduce any returns to a predatory strategy. The price regulations establish maximum prices at which a company can sell petroleum products at any point in time. However if the company sells its product at a price below the maximum allowable, it is permitted to recoup the difference in revenues at a later date. The total amount of allowable revenue a company has not as yet realized is referred to as the company's bank.

Under a portion of the regulations known as the Equal Application Rule, if a marketer increases his price in one location or to one customer but not to others, his bank is reduced, in general, as if he had increased his price in all of his locations or to all of his customers. This may substantially reduce the feasibility of a company increasing prices in specific locations in response to lessened competition. The reason for engaging in a strategy of predatory pricing is the ability to raise price and earn higher profits once competitors are eliminated. Therefore, the Equal Application Rule must reduce the likelihood of predation occurring.

In general, a firm would have to attempt to eliminate competition in a large number of locations and at various functional levels at the same time in order to realize the gains from predation. Such a widespread approach would appear to be extremely expensive. Alternatively, the firm could wait to raise price until the price controls are removed. Such delays, however, will reduce the profitability of a predatory strategy and reduce the likelihood that it will be employed.

This failure to integrate regulatory effects into the main part of the report also poses difficulties for the analysis of netbacks from retail operations in Chapter 3. Under the regulations, the profitability or unprofitability of retail gasoline sales for a constrained, integrated firm does not depend on the current netback from retail operations. Rather, the retail operations of a constrained refiner will be profitable today if they were profitable on May 15, 1973 -- the date defined as the base period in the DOE regulations. This is true, as is shown in the forthcoming Bureau of Economics study, whether the current netback is positive or negative.

The implications of this result for the type of analysis done by the Department of Energy are obvious. If a refiner's company-operated retailing operations are observed to be charging a low price and doing a high volume of business while exhibiting a negative netback, the authors of the DOE study would conclude that the refiner is engaging in predatory behavior. However, under the regulations, the refiner may very well be maximizing his immediate profits. Failure to integrate the effect of the regulations into the analysis would lead to the wrong conclusions. Including the regulatory effects would show that an examination of the refiner's base period retailing margin was necessary to differentiate profit maximizing behavior from predatory behavior.

Negative netbacks may also arise because of the application of the Equal Application Rule to geographic markets. This rule may make it too costly for a firm to increase price, as dictated by market and cost conditions, in a single locality if that locality accounts for only a small portion of the firm's total output. Thus, if a refiner's company stores in a particular location had a negative netback on May 15, 1973 -- perhaps because they had not yet raised price in response to an increase in the wholesale price of gasoline or because they were engaged in a promotional campaign at that time, there might be no feasible way to eliminate that negative netback as long as the regulations remain in effect. At the same time, a refiner might prefer to take losses in this locality for the duration of the regulations rather then shutting down his retail operations there. Shutting down would drive his customers to his competitors and regaining these customers after the regulations are ended might be more costly then running at a loss during the regulations. After all, the regulations have always been viewed as temporary.

To test this explanation of negative netbacks, it would be necessary to compare the prices being charged in the region with the maximum price allowed under the regulations. If the firm was found to be charging the maximum allowable price, the negative netbacks would appear to be induced by the regulations. If not, other explanations -- quite possibly including predation -- would have to be considered.

These are only two possible explanations of negative netbacks which are based on the workings of the DOE price and allocation regulations. There may be others as well. The staff of the Bureau of Economics would be willing to work with the Department of Energy staff in identifying these possibilities and in designing proper ways to test for them. As soon as it is completed, the Bureau of Economics will make its analysis of the effects of the price and allocation regulations available to DOE.

One step which may assist DOE in the empirical examination of the subsidization question is to separate firms which are effectively constrained by the regulations from those which are not constrained. As was noted before, the regulations establish maximum prices which a company may charge for its product. However, in some cases, a firm may find it more profitable to set all of its prices below its maximum allowable prices. Such a firm is referred to as being unconstrained by the regulations. Unconstrained firms should operate much the same as a firm would in an unregulated environment. Thus, for unconstrained firms a negative netback would seem to have the meaning ascribed to it by DOE.

As noted before, firms may accumulate allowed but unrealized revenues in what is called a bank. Thus it is possible to determine which firms are effectively unconstrained by looking at the size of their banks. A firm with no bank is most likely constrained by the regulations while a firm whose bank is growing or whose audited bank amounts to 50 or 60 cents per gallon of monthly sales is probably unconstrained.

An additional possible problem with the DOE study is that it uses data for all of a company's operations in Fort Wayne, Indiana for the entire year 1978. These data may be too aggregated to show predation even if it is occurring. If a refiner or a jobber were engaging in a predatory strategy to eliminate competitors, he might cut prices in one part of a city until competitors there are forced out of business and then cut prices in another part of the city. Also, if predatory behavior can successfully drive out rivals in less than a year, annual data may show positive netbacks even if predation is being practiced.

Finally, the DOE study considers the possibility of predatory behavior only if a refiner is pricing below his average cost. This is not the only possible definition of predation. It may be possible, particularly if company stores have a relative cost advantage, to force one's competitors out of business while pricing in excess of average cost. It is very difficult in such circumstances to determine whether a pricing strategy is predatory or is merely competitive. And, many antitrust authorities would be hesitant to find a violation of the antitrust laws in such cases. However, one should be aware of the possibility that predation could be occurring even if prices are higher then average cost.

In conclusion, the Bureau of Economics is concerned that some readers may conclude that the DOE study proves that refiners have not been predatorily cross subsidizing their retail operations. As the authors are aware, it does not. What the study does is to present evidence which does not support the predatory cross subsidization hypothesis. For reasons discussed in these comments and in the report itself, this evidence is not conclusive proof that cross subsidization does not occur.

At the same time, the Bureau of Economics realizes that the task DOE was assigned is extremely difficult. No study conducted within reasonable cost and time constraints is going to be immune from criticism. However, it is important that readers be properly cautioned about the limitations of any study. Hopefully our comments will provide some of that caution. In addition, they may permit DOE to deal with some of these issues in preparing part two of the study. We look forward to future consultation on this matter.

APPENDIX B.—ADDITIONAL MATERIAL SUBMITTED BY MATT TROY, EXECUTIVE DIRECTOR, NEW YORK STATE ASSOCIATION OF SERVICE STATIONS, INC.

# IS THE INDEPENDENT GASOLINE STATION DEALER BEING DESTROYED AND WHY ?

## OUTLINE

CHAPTER ONE : The structure of the Petroleum Industry with particular emphasis on the marketing segement, as it pertains to the retail sale of gasoline.

CHAPTER TWO : Details of why certain major oil companies want to control the marketing segment of the Petroleum Industry, as it pertains to the retail sale of gasoline.

CHAPTER THREE : Methods used by certain major oil companies in their attempt to take over the marketing segment of the Petroleum Industry, as it pertains to the retail sale of gasoline and the results of their efforts.

CHAPTER FOUR : Recommendations to prevent this takeover by certain major oil companies.

PRESENTED BY :

NEW YORK STATE ASSOCIATION OF
SERVICE STATIONS, INC.

156 MOUNT VERNON AVENUE
MOUNT VERNON, N.Y. 10550

## CHAPTER ONE

## ( STRUCTURE OF THE PETROLEUM INDUSTRY )

To aid in understanding the problem that exists in the Petroleum Industry today, it is imperative to have a basic knowledge of that Industry.

The Petroleum Industry is divided into four (4) basic segments :

1. PRODUCTION OF CRUDE OIL : This segment deals with the exploration and extraction of the crude oil from the ground.

2. TRANSPORTATION : This segment deals with the transportation of the crude oil to the refinery by pipeline or ocean going tanker.

3. REFINING : This segment deals with the changing of the crude oil into gasoline and distillates.

4. MARKETING : This segment deals with the sale of the refined product, from the refinery to the consuming public, and we are primarily interested in that part of this segment that deals with the retail sale of the gasoline.

It is a fact of life today that certain major oil companies control the first three (3) segments of the Petroleum Industry, and that these same major oil companies are waging an all-out war to take control of that part of the fourth segment that deals with the retail sale of the gasoline.

It is here that we, the independent gasoline station dealers must make our stand in order to prevent certain major oil companies from completely controlling the entire Petroleum Industry.

We will therefore discuss the first three (3) segments of the Petroleum Industry, rather briefly, and then go into more detail in discussing that aspect of the fourth segment that deals with the retail sale of gasoline, since we want every fact brought out as to how the consumer will be hurt if the oil companies are permitted to dominate and control the entire Petroleum Industry.

PRODUCTION

It is a known fact that the major oil companies control ninety-three (93%) percent of the nation's proven domestic reserve of crude oil and that eight (8) of these large oil companies actually control sixty-four (64%) percent of our entire domestic reserve.

Furthermore, the trend is toward more centralized control of our reserves. In the past fifty (50) years, many of the smaller oil producing companies have gone out of business, increasing the share of those larger companies that have remained.

The single most important contributing factor to the dominance of the larger companies in the production of oil is the enormous cost of discovering oil, in the present day

best copy available

environment because most of the unexplored areas of the country are controlled by the Federal government and are being auctioned off in large blocks with prices running into the hundreds of millions of dollars.

In addition, most of the unexplored areas are in hostile environments, such as Alaska, or in the deep off-shore waters where the cost is astronomical.

## TRANSPORTATION

Most of the crude oil that is produced in this country is transported in pipelines and by ocean going tankers to refineries. Over ninety (90%) percent of the pipelines and ocean going tankers that are used are owned by certain major oil companies, either alone or as a joint venture with other major oil companies.

( It should also be noted that once the crude oil is refined and is to be shipped to terminals, etc., pipelines are again used, as well as ocean going tankers, and more than seventy-five (75%) percent of these are owned by certain major oil companies.)

## REFINING

In the United States today, there are approximately one hundred and thirty (130) refining companies.

However, eight (8) of the largest oil companies control fifty-eight (58%) percent of the refining capacity.

Furthermore, strict environmental laws make it very difficult to build a new refinery anywhere in the United States.

Since certain major oil companies control most of the crude oil in the world ( either directly if it is domestic, or once it reaches our shores, if it is foreign ) and since they also control most of the pipelines and ocean going tankers, one can understand the difficulties faced by an independent refiner. It is almost impossible to obtain the necessary crude oil in the first instance and if the crude oil is somehow purchased, transporting it to the refinery will be most difficult.

Therefore, it is almost certain that the refining capacity of this country, for many years to come, will remain in the hands of a small number of major oil companies.

By controlling the first three (3) segments of the Petroleum Industry, the major oil companies have been able to create huge profit centers and investment return opportunities, within that structure.

Certain major oil companies then take the huge profits generated in the first three (3) segments and use them in that part of the fourth segment that deals with the retail sale of gasoline, to create unfair competition and thus help them in their attempt to take over the retail sales' market.

If certain major oil companies, because of this unfair competitive edge, are successful in taking over that part of the fourth segment that deals with the retail sale of gasoline, they will then have absolute control over the entire Petroleum Industry.

Thus, you can see the importance of the battle for the control of the retail sales' market, and to better understand it, it is necessary to have a full knowledge of the structure of that part of the fourth segment that deals with the retail sale of gasoline.

## MARKETING

The part of the marketing segment that deals with the retail sale of gasoline consists of five (5) types of gasoline marketers :

1) The branded lessee dealer.
2) The branded open dealer.
3) The private brand marketer.
4) The refiner direct operated outlet. (The Company operated outlet.)
5) The jobber direct operated outlet.

A branded lessee dealer is one who rents the station from the refiner and has a contract with the refiner for the supply of gasoline.

In 1972, there were 111,534 branded lessee dealers and in 1979, that number was reduced to 54,526, indicating that 57,008 of these dealers went out of business in a seven (7) year span.

The branded open dealer has a contract with a refiner for the supply of gasoline but owns the station property himself. These dealers are often referred to as " open-to-buy " branded dealers, since they do have some discretion, during a normal supply period, to change from one (1) brand to another.

In 1972 there were 93,268 branded open dealers and in 1979, there were only 52,395 left in the business, indicating that 40,873 of them went out of business in that seven (7) year span.

The private brand marketer purchases unbranded gasoline from a refiner and sells that gasoline under his own brand name. In most cases these are lesser known brands and the gasoline is usually sold under any name that the private brand marketer chooses.

In 1972 there were approximately 10,000 private brand marketers and today, there are less then 5,000 remaining in the business.

The refiner direct operated station (the company operated station) is the instrument by which certain major oil companies are trying to take over that part of the fourth segment of the Petroleum Industry that deals with the retail sale of gasoline.

It should be noted here that for the longest period of time, certain major oil companies looked upon the retail sale of gasoline as a means of cashing in on the high profits that were being generated in the production, refining and transportation of the crude oil.

It was not until we experienced a shortage of the refined product, and demand exceeded supply, that certain major oil companies decided it was time to get into the retail sale of gasoline.

In 1972, there were only 11,052 refiner direct operated stations, selling 12.6% of the gasoline that was being sold at retail.

In 1979, that number increased to 14,374 ( an increase of 3,322 locations ) and more importantly, these company operated stations were now selling 25.7% of the gasoline that was being sold on the retail market.

In other words, the company operated facilities had more than doubled their sale of gasoline at retail, while increasing their numbers.

The jobber direct outlet has a two-headed type of existence. A jobber can supply a branded lessee dealer or he can open an outlet himself and become a jobber direct station.

Many of the jobbers do supply branded lessee dealers while at the same time owning and operating a retail outlet or outlets.

( NOTE : All of the figures above, dealing with 1972 and 1979 were obtained from the Report of the Subcommittee on Antitrust and Restraint of Trade Activities Affecting Small Business, United States Congress, dated August 14, 1979, which Subcommittee was chaired by Congressman Berkley Bedell of Iowa. )

In conclusion, as far as the structure of the Petroleum Industry is concerned, it is easy to see that there is a tremendous concentration of power in a few major oil companies.

As a matter of fact, seven (7) of the fifteen (15) largest domestic corporations are oil companies, and of the one hundred (100) largest domestic corporations, twenty (20) are oil companies.

The power of certain major oil companies and the problems that this concentration of power can cause were recognized as far back as the mid-1950's when Senator Estes Kefauver of Tennessee said, " Time is running out and the people are going to demand that we stop talking about the issue of oil company power over the consumer, and do something positive to restore free and independent competition to the Industry. "

During the same era, Senator Gaylord Nelson of Wisconsin pointed out that " if Exxon retained only its crude oil and exploration facilities, it would still be the largest privately owned company in the world. "

Thus, in this initial chapter we have shown the structure and composition of the Petroleum Industry.

Furthermore, we have pointed out the tremendous economic and political power that certain major oil companies possess.

In the upcoming chapters, we will show how certain major oil companies exercise this uncontrolled power to the detriment of the consuming public and what can be done to bring about an end to such a concentration of power.

## CHAPTER TWO

## ( WHY CERTAIN MAJOR OIL COMPANIES WANT TO CONTROL THE RETAIL SALES MARKET !! )

More often then not, in any conversation about certain major oil companies and their almost complete control of the Petroleum Industry, you, as a Legislator will raise the question about the low prices that company operated stations usually charge for gasoline vis-a-vis that price charged by the independently owned and operated stations.

As a Legislator all that you see is your constituents being able to buy gasoline at a cheaper price than that sold at our stations, so why should you vote for any legislation that will do away with the company operated stations ?

If we cannot answer that question to your satisfaction, then we certainly cannot expect your support.

But we can and will answer it, for in doing so we will really be pointing out why certain major oil companies want to control that part of the marketing segment of the Petroleum Industry that deals with the retail sale of gasoline.

First of all, the company operated station can and does sell gasoline at a cheaper price than do we. They do it, as we stated above, by taking the profits earned in the first three (3) segments of the Petroleum Industry, and applying them to the retail sale of gasoline, thereby permitting their company operated stations to sell at a price that is often below what they charge us for the product, at wholesale.

However the more important question is " Why do certain major oil companies sell gasoline at cost or less then cost through their company operated stations, using profits made at other levels to subsidize their operations ? "

The answer to that question goes right to the crux of the whole problem, and the answer is very obvious.

Certain major oil companies do this because they want to drive the independent dealer out of business, thereby completing the cycle of complete and absolute dominance over all segments of the Petroleum Industry.

The temporary low price, at the company operated station is a very perishable and short-lived asset for the consumer, for as soon as certain major oil companies drive the independent dealer out of business and control the entire Industry, they can then raise the price as high as they wish, and with no competition around, this can go on forever.

Two (2) examples are worth pointing out, to show what will happen if you permit certain major oil companies to dominate all four (4) segments of the Petroleum Industry :

1) First of all, examine the first three (3) segments of the Petroleum Industry, where there is no effective competition.

You will note that as soon as President Carter removed the controls on crude oil, the prices shot upward and thus the oil companies got their way in the production segment. ( No *effective competition* !)

In the *refining* segment, with *no effective competition* certain major oil companies treat the American consumer like a " yo-yo " cutting down on their refining capacity or increasing it as they please, in order to control the supply of the refined product on the market, and thereby justify price increases. ( As soon as the supply of gasoline becomes adequate, stabilizing the price, certain major oil companies cut back on their refining capacity, causing a shortage, and then they raise the price. )

Since certain major oil companies own almost all of the pipelines and ocean going tankers in this country, they can dictate the flow of crude oil. Thus, in the *transportation* segment, this domination cannot be stopped because there is *no effective competition*.

2) Secondly, when you " handicap " a horse, trying to figure out what that horse will do in future races, you look to past performances.

You might be interested in the past performance chart of the Exxon Corporation when they dealt with the problem of independent marketers in Europe, back in 1968.

In Europe at that time there was a tremendous growth of independent marketers. Sensing a continued growth of same, the Exxon Corporation initiated an " aggressive " market fight by unilaterally reducing the cost of their gasoline by as much as twenty (20%) percent, all across Europe.

Exxon continued this " aggressive " pricing policy for over two (2) years, during which time the independent marketer, unable to compete, became as rare as the dodo bird.

Even though Exxon temporarily lost billions of dollars, they did win the fight and when the independent marketer capitulated, Exxon and every other brand refiner in Europe raised their prices immediately and dramatically and recouped their previous losses, overnight. ( There was no effective competition in the marketplace and Exxon could do as they pleased.)

Recent profit and loss statements by certain major oil companies proved beyond all doubt what happens when the independent marketer is removed from the retail sales' picture.

Almost every major oil company, in disclosing its 1979 profits stated that seventy (70%) to eighty (80%) percent of their profit was made on the European market. ( Of course it was, because they drove every independent marketer out of business and can now charge anywhere from $2.75 to $3.40 per gallon.)

Watch what happens to the cost of a gallon of gasoline in the United States if you permit the oil companies to dominate the Petroleum Industry, as far as retail sales of gasoline is concerned. The present price increases will look small in comparison.

( NOTE : Proof of this Exxon European " blitzkrieg " is documented in the Report of the House Subcommittee on Problems of Small Retail Petroleum Marketers, dated October 20, 1976 at Page #30.)

The oil company's low price will only remain until the competition is destroyed and the fourth segment of the Petroleum Industry is completely controlled, at which time the prices will rise dramatically.

The destruction of the independent dealer gives another advantage to certain major oil companies.

It gives the oil company the flexability to manipulate markets by entering and withdrawing from same at will, through the use of the company operated station.

In our Industry, we are convinced, although it is a very difficult concept to prove with certainty, that certain major oil companies, much like feudal lords, have divided this country into geographical regions, and have designated certain companies for certain areas.

By doing this, they keep other companies out of that area and they therby lessen competition.

When there are only company operated stations in any given area, a major oil company can close them at will and pull out of that area without any notice or trouble. The oil company thus deprives that geographic area of the gasoline that was formerly available, at the closed stations.

If there were some independent dealers of that brand in this geographical area, the oil company could not arbitrarily close them up and that area would be somewhat protected. ( NOTE : Ask the residents of Eastern Long Island about this, for the Shell Oil Company closed down five (5) company operated facilities and pulled out of that market, taking the gasoline formerly available at those stations, with them. )

An independent dealer in a geographic area gives protection to the residents of that area. A major oil company cannot pull up all roots and leave that area without proper supply, because they will be unable to force the independent dealer to close.

Furthermore, as a Legislator you must be concerned if all independent dealers are driven out of business for they are the only ones that offer the consumer, your constituent, emergency road and repair service.

If all independent dealers are driven out of business, who will your constituent turn to when their vehicle breaks down, or when it overheats ?

Don't trade temporary low prices for long term benefits and a stable market.

In Chapter Two we have thus pointed out the reasons why certain major oil companies want to take over that part of the fourth segment of the Petroleum Industry that deals with the retail sale of gasoline.

In the next Chapter we will explore the methods used by these oil companies to bring this takeover into reality.

## CHAPTER THREE

## ( METHODS USED BY CERTAIN MAJOR OIL COMPANIES TO TAKE OVER THAT PART OF THE MARKETING SEGMENT OF THE PETROLEUM INDUSTRY THAT DEALS WITH THE RETAIL SALE OF GASOLINE !! )

Certain major oil companies have used many and varied methods to try to force independent dealers out of business.

In this Chapter we will spell out some of the more flagrant methods.

The following is a partial list of oil company practices, all of which are designed to force the independent dealer out of business and thereby permit the oil company to take over that part of the fourth segment of the Petroleum Industry that deals with the retail sale of gasoline.

1. Arbitrary lease cancellations : Certain major oil companies use their superior bargaining power to include in most leases, terms and conditions that make it very difficult for the independent dealer to make any decision on a pure economic basis.

A lease will usually contain terms that dictate how the dealer is to run his or her station, including the hours of operation and what oil company promotions the dealer must accept.

At the same time, the lease will dictate pricing policy and mandate that a dealer can only sell that oil company's gasoline and no other brand of gasoline or gasohol.

All of these factors add to the cost of the marketing of the gasoline and the dealer has no control over them since it is mandated in his or her lease.

Because a dealer is afraid of reprisals and/or arbitrary lease cancellations, he has, by and large, accepted the oil company's demands. Consequently, many independent dealers have gone out of business or have been forced to operate at less than a profitable margin.

Some dealers choose to violate these terms and conditions, because they are so financially restrictive. When that happens the oil company swoops down, like a chicken hawk coming in for the kill, and cancels the supply agreement and the lease, thereby effectively evicting the dealer.

In either event, the dealer's destiny is the same. He or she is out of business and in financial ruin.

With the emergence of dealer associations, such as ours, and the passage of HR-130, which gave the dealer his or her " day-in-court ", the arbitrary lease cancellations have been on the downturn.

?. Economic Eviction : Sensing that their ability to cancel leases arbitrarily was being diminished, certain major oil companies turned to another method to push the independent dealer out of business, namely " economic eviction . "

Under this method, the oil company, arbitrarily and unfairly increases the rent on a station, again with the idea of driving the independent dealer out of business. ( Once the independent dealer is forced out of business, the oil company can take over the location, operate it as a company operated facility and another step is taken toward the complete domination of the Petroleum Industry. )

The effect of " economic eviction " is to permit the oil company to take over a prime station location without the aggravation of going through a lease cancellation proceeding.

Under this method, once a dealer's lease expires, the rent is doubled or tripled. However, a drawback to the oil company is that they must wait for the lease to expire before they can use this method.

To understand how this method evolved, you must have a basic knowledge of what part rents play in the gasoline station business.

Initially, gasoline marketing regulations prohibited any rent increases since rent was considered a part of the product cost. ( The Emergency Petroleum Act of 1973 stated that business practices were not to be changed and this included the passing along of any increase for product costs.)

Historically in this business, rents had been between 1 and 1/2 cents to 2 cents per gallon pumped, per month and that formula had not materially changed over the years when the gasoline industry was highly competitive.

Certain major oil companies, unsatisfied with this formula, took a case to Court, challenging a ruling by the

Department of Energy, upholding this formula.

The oil companies said that this regulation was tantamount to " rent control " and the lower court agreed with them and permitted them to change the method by which rent is charged, to what is now called, " economic rent ."

Significantly, the D.O.E. never appealed the ruling of the lower court, so the oil companies had won a major victory.

Adding insult to the injury of not appealing this lower court decision, the D.O.E. continued to maintain its previous stance as far as the dealer was concerned and they would not permit rent increases to be included as a non-product cost increase in the calculation of an allowable margin.

Thus, certain major oil companies, switching to "economic rents" doubled and tripled some dealer rents and the dealer was prevented by D.O.E. regulation from passing along these astronomical increases.

Many times this meant economic ruin for the dealer and he or she simply packed up and left the business. ( Again the oil company accomplished its purpose.)

The ability to pass along any rent increase to the customer is a very important aspect of our business and we are pursuing this right in the Courts at the present time.

If we are successful, we will have removed one (1) more weapon from the oil company's arsenal in their battle to knock the independent dealer out of business.

3. Subsidization : Another method used by certain major oil

companies to drive the independent dealer out of business is to subsidize their company operated stations by selling gasoline to them at a lower cost then they sell same to the independent dealer.

Certain major oil companies set two (2) different prices for gasoline, one (1) for their company operated stations and another higher one (1) for the independent dealer.

In testimony before the New York State Senate Consumer Protection Committee, on April 4, 1979, at Page #62, Mr. Robert Bell, Executive Assistant to Management, Ashland Petroleum Company, Division of Ashland Oil, Inc., engaged in the following colloquy :

Question : " Do you charge a different tank-way price, a wholesale price to your company operated stations and dealer operated stations? "

Mr. Bell's Answer : " We treat the company operated stations as if they were large wholesalers. "

Question : " So that they get a rate based on being a large wholesaler ? "

Mr. Bell's Answer : ( Interrupting ) " They do. "

Thus we have the triple barreled effect of certain major oil companies raising the rent of a dealer, under the provisions of " economic rent " while at the same time including terms in leases such as hours of operation, etc., that cuts down the dealer's economic viability and then the oil company adds salt to the wound by subsidizing the company operated facility by selling gasoline to them at a lesser cost then same is sold to the independent dealer.

It is almost impossible for the independent dealer to survive because a company operated facility can sell the gasoline anywhere from 5 to 12 cents below the independent dealer. The resulting unfair competitive edge is a major cause in the forcing of the independent dealer out of business.

Thus, in examining the subsidization method, we see certain major oil companies using the profits earned in the first three (3) segments of the Petroleum Industry, to cut their prices in company operated facilities, in the retail sale of gasoline, so as to drive the independent dealer out of the retail sale market, and thereby permit them to completely dominate the entire Petroleum Industry.

So far I have pointed out the major methods used by certain oil companies to force an independent dealer out of business. There are other, more subtle methods used, and the following are a few examples of same :

a) In the past, an independent dealer could call up his supplier, twenty-four (24), forty-eight (48) or seventy-two (72) hours in advance to order a supply of gasoline, and he or she would be assured of a delivery within that time.

Once certain major oil companies decided to take over the retail sales segment of our Industry, the companies started to play games with the delivery schedule of the gasoline.

First, the oil companies put all of their dealers on what is called " a day certain " for delivery schedule, spelling out scheduled days in a month upon which a dealer was to get his deliveries.

Then the oil companies started violating that schedule with such excuses as " The truck broke down " or " We have farmed out the delivery of the gasoline to a trucking company and we have no control over their drivers. Why don't you call them ? "

Many times a dealer was left with no gasoline to sell for days at a time, and you know what that can do to the business.

b) Again, once certain major oil companies decided to take over the retail sales market, they started to make more deliveries at night and they forced dealers to leave blank checks in the " fill " box.

Night deliveries also meant that a dealer could not physically check the amount of gasoline that was being delivered, and if a dealer discovered a shortage when he checked same the next morning, these oil companies would throw every possible roadblock into his path before the matter was straightened out. Meanwhile that dealer was without the amount of gasoline that was short.

c) When the market was competitive and certain major oil companies were not interested in taking over the retail sales market, they would immediately respond to a dealer's request to repair equipment that was broken, such as a lift, an air hose or a pump nozzle.

Once these oil companies decided to make a concerted effort to take over the retail sales market, they would allow broken equipment to lay " as is " and consequently the independent dealer lost any business that was to be earned from the use of that equipment.

d) In the past, certain major oil companies would take care of the maintenance of a station, where a branded lessee dealer was concerned. Such maintenance included the painting of the station, the resurfacing of the driveways and the sidewalks, and the like.

Once the decision was made to take over the retail sales market, that burden was switched to the dealer, adding one (1) more burden and one (1) more cost to his or her existence.

e) Certain major oil companies introduced the use of credit cards to build business for their dealers and it worked, for the companies with good credit card policies did help the independent dealer build his or her business.

When these same oil companies decided to take over the retail sales market, they started to cut back on their credit card programs and in some cases completely eliminated them. ( There was a concurrent drop in the business of the independent dealer when that happened. )

Facts and figures verify that the methods used by certain major oil companies have been extremely successful. As stated above, the Report of the Committee on Small Business of the Congress, chaired by Congressman Bedell of Iowa showed that in the span of seven (7) years 57,008 branded lessee dealers went out of business and 40,873 branded "open-to-buy " dealers did likewise. ( Of course not all of these dealers were forced out of business but an overwhelming majority were and this permitted certain major oil companies to gain a large measure of control over the retail sales segment of the Petroleum Industry. The proof of this fact comes in the same Congressional Report, where it is reported that in this same seven (7) year span, company operated facilities increased from 11,052 to 14,374 and their share of the retail sales market increased from 12.6% to 25.7%.)

The oil companies are well on their way toward winning this battle for complete dominance of the Petroleum Industry.

The only thing that stands between the oil company and total victory is the independent dealer.

In the next Chapter we will spell out our recommendations to protect this independent dealer and thus prevent this oil company take-over from becoming a reality.

## CHAPTER FOUR

## ( RECOMMENDATIONS )

We now come to our recommendations for permanently solving the problems created by certain major oil companies and their desire to take over the retail sales market.

Our recommendations are as follows :

1. We recommend the passage of a retail divorcement law that will mandate that an oil company that operates a refinery would henceforth be prohibited from selling gasoline at the retail level. ( Thus the integrated refiner would only be permitted to function in the first three (3) segments of the Petroleum Industry and in that part of the fourth segment that does not deal with the retail sale of gasoline. )

Former United States Senator James Abourezk of South Dakota said it best when he said that we must separate the various phases of the Petroleum Industry to create competition on all levels, for " without this competition, the market is simply a distribution mechanism run by wealthy men in boardrooms...... The only protection against that is to pass a regulation saying the price will be controlled by the government according to costs or to see that there exists competition. "

Obviously, we think that the creation of true competition is the best route to take and the way to create this true competition is to pass a retail divorcement law.

Retail Divorcement, as distinguished from Divestiture, means a termination or dissolution of a relationship. ( In the jargon of our Industry, this means the forcing of a petroleum company that operates a refinery out of the retail sales market of gasoline. )

Retail Divestiture means the compulsory transfer of title or disposal of interest upon government order. ( In the jargon of our Industry, this means that a petroleum company that operates a refinery would not only be prohibited from being involved in the retail sale of gasoline but would also be prohibited from owning the land and the buildings thereon.)

Under divorcement, the petroleum company that operates a refinery could still own the land and/or the buildings thereon, but they could not operate the station. The station would have to be operated by an independent dealer.

Under divestiture, the petroleum company that operates a refinery could not own the land, the buildings thereon, nor could they operate the station.

Retail Divorcement legislation has been introduced in the New York State Senate and the State Assembly.

In the State Senate, Senators Owen Johnson and Caesar Trunzo have introduced Senate Intro # S-1792A.

In the State Assembly, Assemblyman Melvin Zimmer has introduced Assembly Intro # A-672A.

Our aim is to get as many members of the State Senate and State Assembly as possible to act as co-sponsors of this legislation.

We also seek your support to get both of these bills out of committee and on to the floor for action.

Since these bills are extremely important to the consuming public and to us, the independent dealers, we intend to leave no stone unturned to secure their passage and we trust that we can count on your support.

Thus, to sum up our first recommendation, we are seeking the passage of a retail divorcement law that will permit an oil company that operates a refinery to keep control of its real estate interests but that will force that company to relinquish operational control of the station, which would then be turned over to an independent dealer.

2. Our second recommendation does not concern present legislation but will only come into play if retail divorcement is passed and certain major oil companies try to circumvent the provisions of that law, by selling gasoline to various retail marketers at a different rack price.

If that should happen then our second recommendation would be to seek legislation that would force a petroleum company that operates a refinery to sell to all purchasers of gasoline, at the rack, in tankwagon load quantities, at the same price.

It is our contention that all marketers, no matter their status, as long as they are reselling at retail, should start from the same starting gate, at the same price.

Thus, when retail divorcement is passed, we will have to keep a keen eye on certain major oil companies to insure that they do not attempt to circumvent the provisions of the law by selling at different rack prices.

If we find that this occurs, we will then come back to the Legislature and seek further legislation to force all petroleum companies that are subject to the retail divorcement law, to sell to all purchasers of gasoline, at the rack, in tankwagon load quantities, at the same price.

If however, the major oil companies accept the mandate of a retail divorcement law and abide by the terms of same, stability will be restored to the gasoline retail sales' market and your constituents, the consuming public will benefit because true competition will flourish.

These are our recommendations and we cannot stress enough the importance to us of the passage of a retail divorcement law.

More importantly however is the fact that not only will we benefit from the passage of this law but so will the consuming public, and it is for both reasons that we intend to pursue this fight with everything at our command.

Retail divorcement is truly an idea whose time has come, and we trust that we can count on your support to make it a reality.

Thank you.

## APPENDIX C.—EXHIBIT 1: PREPARED STATEMENT OF JACK C. PESTER, CHAIRMAN OF THE BOARD OF PESTER CORPORATION AND PRESIDENT OF THE INDEPENDENT REFINERS ASSOCIATION OF AMERICA

STATEMENT OF
JACK C. PESTER
CHAIRMAN OF THE BOARD OF PESTER CORPORATION
AND PRESIDENT OF THE
INDEPENDENT REFINERS ASSOCIATION OF AMERICA

BEFORE THE SUBCOMMITTEE ON
ANTITRUST AND RESTRAINT OF TRADE ACTIVITIES
AFFECTING SMALL BUSINESS OF THE
HOUSE COMMITTEE ON SMALL BUSINESS

AND THE SUBCOMMITTEE ON
CONSUMER PROTECTION AND FINANCE OF THE
HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

May 21, 1980

Mr. Chairman and members of the Committee, my name is Jack Pester and I am Chairman of the Board of Pester Corporation, headquartered in Des Moines, Iowa. Pester Corporation markets and refines petroleum products, primarily gasoline, in the mid-Continent and Rocky Mountain regions, and has retail gasoline outlets in nine states.

I am appearing here today primarily to express the views of the Independent Refiners Association of America, of which I am President. However, so that you understand my perspective, please allow me to tell you something about myself and Pester Corporation, which is an IRAA member.

First, I must explain that my own views have developed as a result of my experience in several areas of the independent sector of the petroleum industry. When I entered the industry more than 20 years ago, it was as a retail gasoline dealer in Iowa. Later, I became an independent jobber and marketer, and in 1976 I was President of the National Oil Jobbers Council. At about the same time, I entered the refining business. Pester Refining Corporation now operates a refinery, located in El Dorado, Kansas, which has a capacity of 30,000 barrels a day.

Having told you something about my own background, I now will turn to the main issue.

## I. INTRODUCTION

The members of IRAA are opposed to the concept of gasoline marketing divorcement or divestiture. We believe that such a drastic step is not warranted by the facts; that it would benefit only a small interest group, the independent dealers; that it could lead to higher prices; and that it generally is anticompetitive and contrary to the interests of consumers.

The Association's goal here today, however, is not to engage in a general discussion of the issue of marketing divorcement, but rather to describe what we project to be the impact of H.R. 6722, in its present form, upon independent refiner-marketers. We recognize that in considering H.R. 6722 this Subcommittee may be attempting to maximize competition within the petroleum industry. While we support that goal, we do not agree with the approach which is embodied in this bill, and in particular we are opposed to Section 3(b)(1), which would impose a refiner sales ratio. The fact is that the refiner sales ratio provision would cause the bill to have a more severe impact upon independent refiners than upon any other sector of the industry.

We submit that the refiner sales ratio provision of the bill does not reflect a clear understanding of the operation of the various sectors of the industry; that it would severely curtail the necessary flexibility and ability of independents to meet changing consumer needs and compete with the majors; that it is arbitrary in that it penalizes those marketers, such as Pester, who have chosen to also become independent refiners; that it would be harmful to consumers by tending to reduce the range of retail alternatives and eliminate price competition within the gasoline marketplace; and that, by threatening the very survival of independent refiner-marketers, it would undercut competition within the refining industry and ultimately hurt the American economy as a whole.

Any evaluation of competition within the petroleum industry must be based upon a realistic assessment of the structure of the total industry. It is the view of the Association that such an assessment inevitably requires recognition that the real competitive problem in the petroleum industry today is the lack of equal access to equitably priced crude oil. We do not believe that a thorough, structural analysis of the industry leads to the conclusion that gasoline marketing divorcement would serve to maximize competition. Further, we do not believe that the refiner sales ratio provision makes any sense when placed in the context of the state of competition within the industry as a whole. Rather, we are convinced that the ratio requirement could cripple independent refiner-marketers, and that in that way the provision is anti-competitive and contrary to the public interest.

I now propose to proceed in my testimony according to the following plan: First, I will explain just who independent refiners are, and I will describe their important competitive role; next, I will discuss the likely impact of the refiner sales ratio provision upon independent refiner-marketers and, ultimately, upon competition; and, finally, I will discuss certain other provisions of the bill.

## II. INDEPENDENT REFINERS: OUR IDENTITY AND OUR IMPACT UPON COMPETITION

There is a critical distinction between the integrated major oil companies and independent refiners, who, by definition, are not significant producers of crude oil. I know that you are aware of this because, in its present form, H.R. 6722 does implicitly recognize that there is a difference. I would like to focus for a minute upon just what the most fundamental distinction is, and what it means.

The term "independent refiners" refers to refiners who are crude deficient in that they own little or no proprietary crude oil*/ and often must purchase their crude oil supplies from their own competitors -- the integrated majors. Thus, in a significant way, independent refiners are faced with the kind of problem which the bill is intended to address. A more fundamental point is that, beyond anything else today, it is factors related to crude sufficiency -- the same factors that determine which refiners are "independent" -- which must shape any analysis of the competitive structure of the petroleum industry. Answers to a whole range of questions, including questions related to gasoline pricing, supply, and distribution, ultimately must incorporate consideration of who has access to, and controls, the limited supplies of crude oil.

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*/ To qualify as "independent" under the terms of §3(3) of the Emergency Petroleum Allocation Act of 1973 ("EPAA"), 15 U.S.C. §752(3), a refiner must have obtained "more than 70 per centum of his refinery input of domestic crude oil (or 70 per centum of his refinery input of domestic and imported crude oil)" from unrelated producers during the base period. The EPAA definition is particularly significant because through it the Congress expressed its recognition of the need for regulatory programs designed to protect and to foster the competitive viability of "independent" and "small" refiners as well as that of independent marketers.

Independent refiners are disadvantaged in that they have not historically controlled, and do not today have equitable access to, significant quantities of crude oil. Therefore, in order to compete with the integrated majors, they have had to grow in different ways, and have developed corporate strategies which are different from those of the majors. In many instances, independent refiners have succeeded in defining strategies which have enabled them to become efficient, profitable companies, capable of offering vigorous competition within the industry.

Today there are more than 170 independent refiners, representing approximately 29% of the nation's refining capacity.*/ Although independent refiners contribute much less than 29% of domestic gasoline production, their contribution to the American economy is magnified because they have a pervasive impact on the behavior of the industry. In the first place, the very presence of the regional, independent refiners challenges the dominance of the small number of fully integrated giants. Also, independent refiners traditionally have been primary suppliers of independent marketers. Further, in marketing, it is the independent sector which -- because it has had to learn to do so in order to survive -- seeks innovation and responds most rapidly to changes in consumer demand.

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*/ National Petroleum Refiners Association, "U.S. Refinery Capacity" (July 25, 1979).

A significant achievement shared by independent refiner-marketers and other independent marketers has been the introduction of both innovative approaches and price competition to retail gasoline marketing. A basic reason for this contribution has been that independents simply cannot market economically in the same ways that the majors do. The sales strategy of the majors often has incorporated establishment of numerous low volume outlets, advertising and credit cards, and the development of strong brand loyalty on the part of consumers; but independents have been unable to afford such an expensive approach. Instead, to the benefit of consumers, independents have elected to compete in other ways.

The consistent theme has been that independents have concentrated on selling large volumes of gasoline efficiently and at the lowest possible prices.*/ At Pester, for example, we have competed successfully by marketing entirely through our company-owned, high volume outlets, minimizing our costs and keeping our gasoline prices down.

Establishment of relatively few high volume company-operated outlets has been a logical way for members of the independent sector to grow while continuing to compete on the basis of price. One reason for this is that by minimizing the number of steps in their distribution systems, companies have been able to keep down product costs. They have minimized their capital costs by selling through a small number of simply designed retail outlets rather than through many low volume outlets equipped for full service. Another reason is that they have been able to establish outlets in neighborhoods such as relatively high crime areas, which offer opportunities but are not attractive to independent dealers.

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*/ Recently the "lowest possible price" has for many independent refiners been a price significantly in excess of that of their competitors. This market price imbalance is basically the result of independent refiners not having access to equitably priced supplies of crude oil and of the aberrational regulatory treatment of some refiners. For example, the manner in which Alaskan North Slope crude oil is treated by the regulations has given the producer/processors of that crude oil, most notably Standard Oil of Ohio ("Sohio"), a distinct price advantage. Independent refiner/marketers and independent marketers have been unable to compete with Sohio on the basis of price because of this regulatory anomaly.

A consideration which cannot be ignored is that, because of the dominance of the majors in the marketing -- as well as other -- segments of the industry, independent refiner-marketers have had to own a high percentage of their outlets in order to have continued assured access to retail outlets. They have needed to seek a relatively continuous flow of production in order not only to maximize the efficiency of their refinery operations and minimize their costs, but also to maintain continuing relationships with those major firms on whom they are dependent for supplies of crude oil.

In addition to constantly searching for ways to better compete on the basis of price, independent companies have in other ways been as innovative and as quickly responsive to consumer needs as possible. For example, many companies -- including those like Pester who did well with the full service approach -- have converted their outlets at least partially to self-service. The reason for the change is that low prices and minimal service is the combination which many consumers want. Every town now has a muffler shop, a transmission shop, a tire service center, and the inevitable car wash; and if the consumer wants to patronize those services, and to pump his own gasoline and change his own oil, then that is his choice and he has the right to that alternative. And we have been prepared to give to him the alternative he wants.

Independents also have responded to consumer needs by offering gasoline for sale when it is needed and where it is needed. That means that they have operated longer hours, and in states and neighborhoods that major integrated companies have deserted.

Although the independent sector has been innovative and responsive to consumer demand in a variety of ways, its most important contribution to gasoline marketing has been and remains the introduction and maintenance of price competition. That contribution has been acknowledged consistently and often by Congress, as well as by the current and earlier Administrations. For example, as early as 1967, in its lengthy report on gasoline marketing, the Federal Trade Commission said:

> The record is clear that independent refiners and marketers exert a beneficial influence upon competition that is disproportionate to their actual representation within the petroleum industry: they have long been innovators of marketing methods and have been the primary agents in translating efficiencies at the production and distribution levels into lower prices at the retail level.*/

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*/ The Federal Trade Commission's Report on Anticompetitive Practices in the Marketing of Gasoline, at p. 39 (June 30, 1967).

Four years ago, the Senate Committee on the Judiciary discussed that contribution in this way:

> The concern shown through this report for the fate of independent refiners and marketers is not based upon any notion that the independent sector is made up of special individuals who deserve to be protected from the normal economic forces. Rather, it is based upon solid evidence that the independent sector is the only source of real price competition in the industry. Without the discipline imposed by these firms, the consumer would pay substantially higher prices for petroleum products.*/

More recently, Senator Kennedy, current chairman of that Committee, said:

> Any discussion of competition in the petroleum industry inevitably focuses on the role of independent refiners. Their importance to consumers in stimulating price competition is well understood.**/

In gasoline marketing, independent companies have competed on the basis of price because they have had to. Price competition has been good for them, and it certainly has been good for consumers.

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*/ Senate Committee on the Judiciary, Petroleum Industry Competition Act of 1976, S. Rep. No. 94-1005, 94th Cong., 2nd Sess. 147 (Part 1) (1976).

**/ 124 Cong. Rec. S8949 (daily ed. June 9, 1978) (remarks of Senator Kennedy).

## III. THE REFINER SALES RATIO PROVISION WOULD HARM CONSUMERS BY SERIOUSLY IMPAIRING THE ABILITY OF INDEPENDENT REFINER-MARKETERS TO SERVE AS A COMPETITIVE FORCE.

### A. General Comments */

The refiner sales ratio provision of H.R. 6722, Section 3(b)(1), would limit competition and lead to higher consumer prices because it would seriously hamper the ability of independent refiner-marketers to compete with major brand networks. Further, it would freeze into place a marketing approach, which is not always appropriate, and which already has been perpetuated by an unresponsive allocation system, and it would limit the flexibility with which the independent sector -- clearly the most innovative part of the industry -- can respond to changing consumer needs.

The ratio provision would limit the percentage of its sales which a small or independent refiner could make through its company-operated outlets to that percentage which it experienced in 1978. It would limit any increase in sales volume since 1978 even further: the percentage of increment which could be sold through its company-operated outlets would be the lesser of 50% or its own 1978 percentage. This would cause a variety of problems.

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*/ Our comments assume that the bill would go into effect after decontrol of gasoline prices.

First, in general, independent refiners are not well positioned to absorb any new blow to their efficiency and competitive viability. As I have pointed out, any analysis of gasoline marketing must begin by placing that function in the context of the petroleum industry as a whole. An important consideration is that crude deficient independent refiners are already at a severe disadvantage, as compared to the majors, because independent refiners have significantly higher crude costs. Because of their higher costs for crude oil, they have had to reduce their refining, transportation, distribution and other costs to the bone in order to remain price competitive with integrated refiners and their networks of primary brand outlets. Thus, to the extent that independent refiners suffer any additional harm, if only by being forced to incur unnecessary added costs, that harm will have a significant impact.

More specifically, an immediate result of the ratio would be that it would, in effect, cap the ability of refiners to respond to changing consumer patterns. In the last decade, the independent sector has been able to pose a competitive challenge within the traditional, major-dominated retail gasoline marketplace. In recent years, there may, in fact, have been some moderate growth in the number of independent refiner-operated retail outlets. A reason for this is that independent firms, who are not burdened with extensive dealer networks reflecting the consumption patterns of years ago, have been able to respond to changes in consumer demand. Independent firms have been able and willing to modify both the nature and the locations of their outlets. In this time of a changing marketplace and ever-increasing prices, it is important for consumers that independent refiner-marketers remain able to respond to changes and to offer the maximum number of retail alternatives.

Although it would not have the same devastating effect as would a divorcement requirement, the ratio certainly would threaten independent refiner-marketers' current strength and limit their potential for growth or change in response to consumer demand. It would act as a cap on this growth in part because §3(b)(1)(B) would force independent refiners to sell at least one-half of any increased gasoline sales volume through a method for which most are not at all suited because they have no established extensive dealer networks. The requirement would be particularly burdensome for the smaller companies, who, because they have low volumes to begin with, have minimal flexibility.

Further, §3(b)(1)(A) of the ratio requirement would limit the ability of many independent refiner-marketers to continue to operate even at current levels and thus to maintain efficient refinery operation levels and to assure the continuance of their relationships with critical crude oil suppliers. Because many market areas are dominated by outlets affiliated with the majors, company-operated stations are necessary for some independent refiners as a sort of "safety valve," providing assured outlets when their short term gasoline supplies are high.*/ When refiners limit their runs because they cannot dispose of their output with sufficient speed, they not only reduce their efficiency and increase their unit costs, but also risk serious crude oil access problems by jeopardizing their supply arrangements. At times when there are no purchasers, at least at the relatively high prices which some independent refiners must charge, the ratio requirement would practically force independent companies to reduce refinery operations to substantially below the normal level.

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*/ Many IRAA members who are refiner-marketers are net purchasers of gasoline, and some purchase all the gasoline they sell. For them, the problem would not be the same.

There are a variety of situations in which the ratio could force refiner-marketers to sell gasoline in markets in which they really have no potential wholesale customers. An example which occurs to me involves a market area in which Pester has a product exchange relationship and no wholesale operation. I know that the prospect of selling an incremental volume at the wholesale level in that market could face us with a serious problem. Since other refiners dominate the area, our only option would be to seek to attract our exchange partner's customers. It seems pretty clear that what would happen next is that the exchange agreement would be called to a halt, and we would no longer be able to compete in that area.

The refiner sales ratio simply makes no sense because there is no justification for it, and it would cause far more harm for everybody than good for anybody. It apparently is designed to protect independent dealers from competition because those dealers believe that they have problems. It is true that one result of the ratio would be that dealers would face reduced competition, and thus would have to worry less about their other problems. The cost, however, would be fewer alternatives and increased prices for consumers, and reduced competition within the petroleum industry as a whole. The ultimate effect of the ratio would be to levy a tax upon all consumers in order to subsidize certain dealers whose traditional competitive approaches no longer are viable.

B. Specific Problems Within the Refiner-Sales Ratio.

As we have said, the Association is completely opposed to any form of refiner sales ratio. Listed below are several specific aspects of the ratio requirement, which we believe would be particularly burdensome:

(1) The requirement that the refiner sales ratio be determined on a state-by-state basis. Section 3(b)(1) requires a company to determine its refiner sales ratio on a state-by-state basis. Apparently, the intent of the provision is to have refiners establish separate ratios for separate market areas. The state-by-state approach is unrealistic, however, because state borders bear no relationship to the factors which delineate market areas. The outlines of a company's various market areas reflect not the boundaries of political subdivisions, but rather factors such as highway systems and interchanges, and centers of population.

The state-by-state approach would be harmful to consumers because it could preclude refiner-marketers from reassigning even a constant volume of gasoline within certain communities or market areas. For example, a company which markets in Kansas City, and which experiences no growth in its total sales, would be precluded from being fully responsive to population shifts across the Kansas-Missouri border. If it attempted to relocate an outlet from one state to another, it would be deemed to be experiencing a growth in volume in the latter state, and it would be forced to find a new way to sell the equivalent of one-half of the gasoline supplied to the relocated outlet. This would mean that if it chose to continue to sell the same volume of gasoline through its own outlets, the company would have to actually increase its total sales volume in order to relocate in response to changes in population patterns.

One example of a problem is a danger that I see for my own company in our own state of Iowa. Historically, in Iowa we have been a reseller/retailer without wholesale business. At the time of the refinery acquisition, we had no DOE allocated customers. However, the revision of the 1978 base period has resulted in our having approximately 200,000 gallons per month of wholesale business directed to two or three customers. At the same time, our Iowa retail organization sells about 8,000,000 gallons per month, through 80 service stations. If the refiner sales ratio were put into place after decontrol, a predatory competitor -- whether an integrated major or independent -- could put us into a difficult spot. If he were to attract away our two or three wholesale customers with extremely low prices, he could effectively create a situation in which we would have to choose between actually reducing our number of units in that state or selling to other wholesale customers at prices which could be considerably below market.

Since the nature of market areas tends to vary among independent refiners, it may be difficult to find a realistic alternative to the state-by-state approach. However, although the Association does not believe the sales ratio to be either workable or necessary, we submit that a single ratio established for each refiner for the entire nation would be less arbitrary than the state-by-state approach. Obviously a nationally determined ratio would not mean that each independent company would be marketing throughout the country, because, almost by definition, independents are regional companies. A nationally based ratio simply would do less than a state-by-state ratio to undercut the independent companies' flexibility to reallocate gasoline volumes in response to consumer needs.

(2) The use of calendar year 1978 as the base year for determination of the refiner sales ratio. As I have said repeatedly, an important characteristic of independent refiner-marketers is that they are able to respond

to shifts in demand. Already, it is likely that many independent companies have added or relocated outlets since 1978. Pester, for example, has added several new outlets, none of which have displaced independent dealers. If the intent of the ratio is to prevent refiners from displacing independent dealers, a more realistic base period would be the year 1978 adjusted by the addition of gasoline sales volumes at all subsequently added outlets not displacing a refiner's own independent dealers.

(3) Failure to provide for new entrants. One of the ways in which the ratio would be anticompetitive is that it fails to provide for new entrants. An essential feature of a competitive market is relatively easy entry. The ratio requirement would prevent independent marketers from vertically integrating even though that might be best not only for them but also for competition generally, and it would preclude new entities from entering the industry at all.

(4) No distinction between purchased and produced product. Many independent refiner-marketers are net purchasers of gasoline. It is arbitrary and contrary to the apparent intent of the bill to treat independent refiners in a different way than other marketers, at least to the

extent that they are simply purchasing gasoline at the going price and then marketing it. Any ratio provision should not be applied to that volume of a refiner-marketer's gasoline sales which is beyond the level of its own production.

C. Summary

The refiner sales ratio is unworkable, inappropriate and would unreasonably limit the flexibility of independent refiner-marketers. Furthermore, there is simply no justification for imposition of the ratio. There is no evidence that independent companies are subsidizing their sales or, in any significant way, shifting their gasoline volumes away from independent dealers to company-operated outlets. In fact, many independent refiner-marketers have never even had any significant number of dealers to begin with; a dealer network is contrary to their basic marketing approach.

The refiner sales ratio provision would hurt competition by limiting the number and range of alternatives which could be offered in the gasoline marketplace. It would hurt consumers by limiting the ability of independent refiner-marketers to offer price competition and by adding to independent refiner-marketers' costs -- and ultimately to their prices. The Association urges that the Subcommittees reject the concept of the refiner sales ratio.

## IV. THE POSITION OF IRAA REGARDING CERTAIN OTHER FEATURES OF H.R. 6722.

Although the refiner sales ratio provision is the main focus of IRAA's comments today, there are several other features of the bill which I wish to discuss briefly.

A. Definition of "independent refiner". Section 3(a)(1) would not apply the prohibition on service station operation to "an independent refiner or a small refiner." Section 3(f)(3) would define an "independent refiner" as one who obtained, directly or indirectly, in calendar year 1978, more than 70 percent of its crude oil from unrelated producers. The related definition of §3(F)(1)(A) defines the term "producer" to include any person "engaged in the production or importation of crude oil or refined crude oil products."

If the definition of "independent refiner" included in H.R. 6722 is intended to be consistent with the EPAA definition, as updated to a 1978 base year, then we agree with it. Not only is the definition well established by the Department of Energy and its predecessors and within the industry, but it accurately takes into account that the key distinction among refiners is the degree to which they are also crude oil producers.

We are concerned, however, that because of the way the definition of "producer" has been drafted, certain refiners who are not "small" but are widely viewed as "independent", and who certainly fall within the EPAA definition of "independent", would not be deemed "independent" under H.R. 6722. As drafted, the bill would discriminate against those independent refiners who were dependent upon foreign sources of crude oil in 1978.

To avoid this problem, we urge that the definition of "producer" be redrafted, in a manner consistent with the current Mandatory Petroleum Price Regulations, which refer to "a firm which produces crude oil or natural gas, or any firm which owns crude oil or natural gas when it is produced."*/

B. Federal Preemption

As you know, a number of states are considering legislation which resembles H.R. 6722. Although it appears that most states will reject this approach, others could adopt it. It would be wasteful, costly and confusing to permit both state and federal regulation of this area, particularly if state laws differ greatly among themselves, and from the federal law. Therefore, although we oppose H.R. 6722, we urge that a provision be included in it, or in any successor bill, expressing the intent of

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*/ 10 C.F.R. §212.31

Congress to preempt any state law or regulation requiring the divorcement or divestiture of retail gasoline marketing operations by refiners.

C. Rack Pricing Provisions

Because there appears to be some confusion about the meaning of these sections, I will begin my discussion by explaining our interpretation of the intent of §§3(c)(1) and (2), the provisions which would require rack pricing.*/

The first portion of §3(c)(1) would require that persons purchasing similar quantities of motor fuel, of like grade and quality, and at the same time and place, be charged the same price. The provision would not forbid differentials in price which reflect differences in terms, in a refiner-seller's costs, or in the kinds or nature of services provided by the refiner-seller. Further, §3(c)(2) would permit a refiner-seller to add to its rack price a uniform and reasonable surcharge reflecting a buyer's use of a trademark or trade name, or of services associated with the use of a trademark or trade name.

The last sentence of §3(c)(1) is intended to provide that a refiner will be in violation of the rack pricing provision if it subsidizes its retail outlets by, in effect, undercharging itself in intra-company sales of gasoline.

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*/ As is the case throughout our comments, we are assuming that the bill would go into effect only after the decontrol of gasoline.

The basic rack pricing requirement would not cause problems for Pester because, like many IRAA members, we already have rack pricing. In fact, my own view is that the trend toward rack pricing which has already developed among independent refiners, on their own initiative, is one of the stronger indicators that independents are not engaged in predatory subsidization. The fact that many of us are using rack pricing supports the argument that the refiner sales ratio is completely unwarranted.

Furthermore, the concept of rack pricing is consistent with positions which the Association has taken in the past. Not only are IRAA members not engaged in predatory subsidization, but also we have frequently, in other contexts, expressed our concern about the possibility of downward subsidization within the petroleum industry.

However, although many IRAA members do support the principle of rack pricing, we are not yet convinced that these provisions, as drafted, can work. As you know, there have been other Congressional efforts to develop a fair, practical and enforceable rack pricing requirement, but those efforts have ended in frustration. For example, it has been very difficult to develop a formula which adequately reflects the cost of intangible assets such as goodwill and brand loyalty developed over many years. Also, the accounting problems involved in separating and allocating costs among different channels of trade could be very difficult for some companies. Here, with this bill, it is uncertain how a refiner may go about determining the uniform and reasonable surcharge permitted by §3(c)(2).

Other problems are related to the last sentence of §3(c)(1), which apparently is designed to prevent predatory subsidization. It is not obvious how this provision could be put into effect, but we are concerned about its possible impact. As we understand it, it could limit a company's ability to make price cuts which are defensive rather than predatory. Let me describe, as an example, one possible situation involving Pester. Suppose that in a certain market area, in an effort to increase its market share, our leading competitor, an integrated major, began to subsidize its gasoline sales to dealers. In that case, we could be forced to choose between meeting the predatory prices of our competitor, and selling for a short time below cost, or losing our business. If we were reluctant to cut prices in this way for fear it would establish a prima facie case of a violation of this bill, we would be sitting ducks for the majors and their tremendous financial resources. Using this technique, they could pick off our outlets, one by one. Pester's view is that if our company has an outlet which is not making it on its own, we generally should not subsidize it -- we should close it down. But there are times when we need to cut prices for the short run in order to protect ourselves from the predation of others.

For these reasons, and because the language of these provisions is confusing, the members believe that §§3(c)(1) and (2) need further work and clarification.

### C. "Open Supply" Provision

Section 3(d)(1) would make it "unlawful for any person to restrain, interfere with, or in any way prevent the purchasing from another, the storing, or the selling of motor fuel by any dealer." IRAA's members have varying opinions about this provision, and the accompanying provision. As with the rack pricing provisions, some IRAA members are concerned that these sections have not yet been fully developed. Moreover, the accompanying provision of §3(d)(2) does not fully resolve questions related to adequate consumer notice and supplier liability to consumers.

## V. CONCLUSION

The Association's members do recognize that, like other businesses faced with change, the dealers have problems. Particularly because we know what it means to struggle to maintain our own competitive viability, we are sympathetic. We see that some of the dealers' difficulties are directly related to federal price and energy regulations. Some dealers may be the victims of improper supplier practices, and for them the proper vehicle would be a properly administered Petroleum Marketing Practices Act.*/ Other factors which dealers view as "problems" are manifestations of a competitive economy and the inevitable result of an ever-changing marketplace. We recognize the sincerity with which Chairman Bedell struggled to address dealers' concerns during the process

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*/ 15 U.S.C. §2801, *et seq*.

of drafting H.R. 6722, and we know that the two Subcommittees which are holding these hearings today are seeking real answers. We do not believe, however, that H.R. 6722 would provide answers which would be appropriate for the economy as a whole.

It is our hope that in attempting to solve some of the problems of the individual competitors who are independent dealers, Congress will not inadvertently undercut competition within the entire petroleum industry. We urge you to take a fresh look, and to avoid doing far more harm than good. We urge you to abandon the divorcement approach and to reject the idea of a refiner sales ratio. We suggest, instead, that if you wish to analyze the state of competition within the industry you begin by focusing on access to equitably priced crude oil, which is really the central underlying consideration.

I thank you for the opportunity to participate in these hearings today on behalf of the Independent Refiners Association of America.

### Exhibit 2: Letter from Jack C. Pester, President IRAA, to Chairman Bedell re: H.R. 6722

INDEPENDENT REFINERS ASSOCIATION
OF AMERICA

1220 19th STREET N.W.
WASHINGTON, D.C. 20036
(202) 466-2340

June 12, 1980

The Honorable Berkley Bedell
Chairman, Subcommittee on Antitrust
and Restraint of Trade Activities
Affecting Small Business of the
House Committee on Small Business
B-363 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Bedell:

The Independent Refiners Association of America wishes to express appreciation for the opportunity to participate, on May 21, 1980, in the hearing on H.R. 6722 held jointly by your Subcommittee and the Subcommittee on Consumer Protection and Finance of the House Interstate and Foreign Commerce Committee. This letter is intended to clarify and further elaborate upon several of the points made by members of the IRAA panel at that hearing.

First, we wish to reiterate that we are opposed to the concept of retail marketing divorcement. We do not believe that the drastic steps provided for by H.R. 6722 -- including both divorcement and the refiner sales ratio requirement -- are an appropriate response to the kinds of competitive issues which H.R. 6722 apparently is intended to address. One reason is that many of the practices alleged by certain independent dealers already have been addressed by the Petroleum Marketing Practices Act of 1978. A major purpose of that Act is to prevent the arbitrary disenfranchisement of dealers and to establish fair and reasonable conditions under which a franchisor may terminate a franchise. The Act follows the sensible approach of addressing certain practices directly, rather than sweeping away the whole class of competitors who conceivably could engage in those practices. While the Act provides substantial legal protection against unfair termination and nonrenewal, we believe that it has been underutilized and even ignored by independent marketers. It is certainly inappropriate to criticize this new statute as ineffective in light of experience to date.

Furthermore, we object to H.R. 6722 not only for the reasons we have mentioned in our testimony,but also because the bill is designed primarily to favor a special interest group, the independent dealers, rather than to address fundamental problems. As we said in our testimony, analyses of the competitive structure of this (or any) industry must take into account the way in which the total industry operates. It is impossible to successfully address problems related to marketing trends by focusing solely on the marketing sector. Not only is the approach too narrow because it examines just the symptoms -- and not the root causes -- of problems, but also it is extraordinarily dangerous because it will have unforeseen effects upon the state of competition throughout the industry. Even more than is normally the case with government regulation, when it comes to influencing the competitive structure of an industry, the government "cannot do just one thing."

Thus, in our testimony, we urged that if the Subcommittees wish to address problems related to the state of competition within the marketing sector of the petroleum industry, they necessarily must begin with a review of the functioning of the total industry. As the record of this hearing demonstrates, many people are aware that trends such as the declining number of independent retail dealers are the result of complex factors, including significant changes in consumer demand. We submit that the single factor most responsible for retail motor fuel price and supply disparities and distortions is the nonexistence of a competitive crude oil market -- and particularly the state of the foreign crude markets, which are characterized by multi-tiered, politically administered pricing patterns.

The Association urges that the Subcommittees shift their focus to the question of access to crude oil at equitable prices because that is where an analysis of the current state of the retail marketing sector must begin.

Small and independent refiners are significantly dependent on foreign crude oil, and there are wide variations in foreign crude oil prices. There are major differences both from one country to another, and between contract and spot prices, and, typically, it is the major oil companies who control the lower cost crude oil. For example, supplies of Saudi Arabian crude oil, which may be priced as much as $8.00 per barrel less than crude oil of comparable quality from other nations, are controlled by the four Aramco partners -- Exxon, Chevron, Texaco and Mobil. In today's not yet decontrolled market, there are problems with domestic supplies, as well. The majors tend to have the greatest access to price controlled oil, which, even after adjustments through the Entitlements Program, costs as much as $8.00 per barrel less than decontrolled oil.

For documentation of the problems resulting from crude oil price disparities experienced within the last year, not only by small and independent refiners but also by the independent marketers of every size who are their customers, we call your attention to two recent proceedings before the Office of Hearings and Appeals ("OHA") of the Department of Energy ("DOE").

In Ohio Independents for Survival, BEL-1075, an ad hoc group of Ohio independent marketers argued that -- as a direct result of the regulatory treatment accorded ANS crude oil and of Sohio's position as a substantial producer, processor, and marketer of products refined from that crude oil -- they are being damaged in the retail marketplace. After it initially granted relief to those marketers, on April 30, 1980, OHA rescinded its order, later suggesting that the problem being experienced by Ohio marketers is national, rather than regional, in scope, and might better be addressed in a rulemaking proceeding.

These same problems had been highlighted earlier when, on December 21, 1979, OHA granted relief in Union Oil Company of Ohio, DEE-5748. In that case, a major oil company successfully drew attention to the price disparity problems about which small and independent refiners had been complaining for some time. On August 31, 1979, in its application for exception, Union said that, because of the substantial disparity between foreign spot market and foreign contract prices, its crude oil acquisition costs were significantly above those of most other refiners. Union argued, in part, that its high costs were imposing severe financial hardships on its customers, many of whom are branded independent distributors and retailers, and those customers testified regarding the problems which they were facing.

The records of these two cases provide just two examples of the many situations where small marketers have faced substantial problems directly linked to the difficulties their suppliers have experienced in obtaining crude oil at prices not drastically out of line with those being paid by most majors. They clearly demonstrate that factors related to crude oil access are critical to the operation of the retail marketplace.

We wish to refute the suggestion that, in urging that Congress focus on crude oil access questions when it looks at the petroleum industry, we are asking for special "protection" for small and independent refiners, while attempting to deny similar protection to the dealers. First, we are drawing attention to a situation which has an impact not just upon refiners, but upon all segments of the industry, and which, as the Union Oil and Ohio Independents cases suggest, has resulted in severe problems for small businesses. Our point is that solutions to many of the problems at the retail level will flow almost automatically when the crude oil access situation is resolved.

Further, we are asking for nothing comparable to the kind of anti-competitive special protection which would be provided for independent dealers by H.R. 6722. We certainly are not asking for precipitous action such as the removal by legislative fiat of our competitors from the marketplace. We are acutely aware that changes to the competitive structure of the industry must be approached with great caution, and that realistic solutions to competitive problems must involve a minimum of government regulation. We recognize that, in other situations, fair trade and other laws enacted to protect the competitive position of certain individual competitors have had devastating effects on competition as a whole.

We do not suggest that, at this point, we have found an "ideal" solution to the crude oil access problem, but we are attempting to draw your attention to what we believe is the real problem. We are firmly convinced that there is a need for industry-wide access to crude oil at equitable prices, and that until that need is met there will be no equity for independent marketers.

We specifically suggest that any federal program designed to address the problem of access to crude oil at equitable prices must have the following characteristics:

(1) The program should be continuing and consistent, but also capable of flexing in response to changes in world crude oil supply conditions.

(2) Refiners should not be denied the incentive to continue the search for crude oil.

(3) The program should be designed to minimize inflationary pressure on crude oil -- and eventually upon product -- prices.

(4) Government machinery and the degree of government involvement should be kept to a minimum.

(5) The program should be based upon objective analysis of the operation of competition within the total industry.

(6) A predominant goal should be to facilitate competition within every industry sector, rather than to remove any competitor at any level.

The Association wishes to draw the attention of Congress to the impact of the crude oil market upon consumer prices and upon the competitive viability of independent entities within the petroleum industry. We do not ask for special "protection", but we do stand ready to work with

Congress toward a real solution to the competitive problems within the industry.

Thank you, once again, for the opportunity to participate in these hearings.

Sincerely,

Jack Pester
President

## APPENDIX D.—PREPARED STATEMENT OF EDWARD J. MITCHELL, PROFESSOR OF BUSINESS ECONOMICS, UNIVERSITY OF MICHIGAN

STATEMENT OF
EDWARD J. MITCHELL
PROFESSOR OF BUSINESS ECONOMICS,
UNIVERSITY OF MICHIGAN
AND
DIRECTOR, ENERGY POLICY STUDIES
AMERICAN ENTERPRISE INSTITUTE

BEFORE THE
SUBCOMMITTEE ON ANTITRUST AND
RESTRAINT OF TRADE ACTIVITIES AFFECTING
SMALL BUSINESS
OF THE
COMMITTEE ON SMALL BUSINESS

AND THE

SUBCOMMITTEE ON CONSUMER PROTECTION
AND FINANCE
OF THE
COMMITTEE ON INTERSTATE AND
FOREIGN COMMERCE

ON

HR 6722

JUNE 4, 1980

Mr. Chairman and Members of the Committee:

In recent years the long term trend of gasoline marketing from full-service dealer-operated stations to no-frill employee-operated outlets has accelerated. While it is commonly believed that soaring prices of gasoline have spurred this shift, elementary economic logic does not support this belief. Independent dealers themselves see their decline as caused by predatory actions of the major oil companies, but this view also finds little support in logic or fact. Rather, it would appear that government regulation of the petroleum markets since the Arab embargo has broken the necessary implicit contracts between dealer operators and their customers and has otherwise favored no-service marketing. In addition, the high level of investment in full-service marketing facilities in the late 1960's, a seemingly economic decision at the time, has contributed to the hardship of the independent franchised dealer.

Shifts from the franchised service-oriented marketing format to the low-service employee-operated approach are hardly novel in American economic history. Take the case of automobile tires. In 1922 over 98% of all sales of replacement tires were made by franchised dealers. By 1960 that figure was down to 41%. What happened was that:

> technological improvements in tire construction, improved roads and rapidly declining prices marked the 1920's and 1930's. In 1926, every car on the road required 8 tires per year. By 1960, car owners bought on the average only 1.2 tires per year. The weighted average price of all replacement tires declined from $20.66 in 1923 to $10.82 in 1933. With these improvements, the importance of the service rendered by tire dealers declined significantly. Technological improvements make it hard to appreciate statements such as the following: 'the successful dealer was more interested in giving his customers trouble free mileage than getting a repair job -- and ready to get up in the middle of the night and drive long miles to take care of a customer in trouble'.
>
> With these changes, tires became more of a convenience good which consumers could purchase and have mounted while shopping for other goods or while having their car serviced. This provided substantial opportunities for department stores, chain stores, and oil companies which entered the market in 1920's and now account for about a third of all replacement tire sales. [Marx ( ), pp.38-39]

A similar economic process has been occurring in the retail gasoline business. Franchised full-service gasoline stations have declined because consumer wants and technical change have made the provision of some services at gasoline stations less economic than they were before. This process has led to a political response from gasoline station dealers. Just as in the 1930's when the corner grocery store and small drug store were threatened by chain stores and supermarkets, economic forces have been dealt with by proposing legislation that would eliminate or at least stem the tide of the new innovation.

To appreciate how this process is occurring in the organization of the retail marketing of gasoline consider the value of services in gasoline marketing and their relationship to independent dealers.

A full service station is one that offers minor services and repairs, where your windshield will be cleaned, where credit can be obtained, and where rest rooms are available. Since it is extremely inconvenient to charge separately for these services, they are sold as a part of a package along with the gasoline itself, that is, payment for the services are included in the price of the gasoline. Because there is no direct connection between the payment for these services through higher prices of gasoline and the actual usage of the services, the arrangement contemplates a long term relationship between the service station and the customer. It is expected that over a period of time this stream of extra gasoline charges will be connected to a supply of extra services such that both the dealer and the customer will regard the exchange as beneficial.

For this implied long term contract to be enforced the parties must continuously monitor performance on each side. For the customer this presents no problem, but on the seller side it precludes absentee management. An unsupervised employee has little incentive to honor this contract since its enforcement implies more work for him with no correlated rewards. Thus, the full service station tends to be more efficiently run by an on-site manager with a stake in the retail enterprise, that is, an independent dealer.

In contrast to this arrangement, company operated stations tend to sell a mere commodity. Since no long term arrangement is contemplated, since customers are free to shop around for the lowest price, moving from station to station, and since employees of the stations themselves will turn over rapidly, each transaction at such a station is to be regarded purely as the purchase of a commodity in a spot market.

The comments of William J. Thomas, Vice President of Marketing, of Rock Island Refining Corporation, a small midwest refiner-marketer, puts the matter succinctly:

> A customers' demands for automotive services vary widely and constitute not one, but several markets. First, there is the consumer patronizing his neighborhood dealer who supplies him with gasoline, tires, batteries, accessories, maintenance and, in effect, an insurance policy that the dealer will make a road call on the cold winter day that the battery fails. Since this dealer typically runs a relatively low volume station with correspondingly high mark-ups, the consumer pays an insurance premium of perhaps 5¢ per gallon over what he would pay at a high volume, no frills outlet.
>
> At the other extreme is the price conscious consumer, by definition immune to brand loyalty, who shops around for his gasoline and is often a do-it-yourself in the matter of repairs. For tires, batteries, motor oil and accessories, he frequently uses the discount houses.

Mr. Thomas' observation that there is not one but several gasoline markets understates the variety of marketing formats. There are almost as many ways to sell gasoline as there are gasoline stations. Thus, when we speak of full-service versus no-service stations we are greatly oversimplifying reality. It is more accurate to think of gasoline retailing as consisting of a continuum of marketing formats with full service and no-service at the extremes.

It is also an oversimplification to think of all independent dealers as operating full-service stations and all employee-operated outlets as offering no service. The relationship is strong but far from perfect. Shifting consumer demands have resulted, for example, in "split island" operations where dealers offer a choice of full service or self-serve. Adaptation by the independent dealer has moved him along the continuum and preserved his competitive viability.

The economic forces favoring less service do however work against the full service station. They work against the full service dealer unless he adapts his marketing format, or is content to focus his sales on that portion of the market that wants service. This latter market has been shrinking but it will not disappear. There will always be a substantial body of consumers, including myself, who require service. Thus the full service station is not doomed, but the trend in the United States at this time is against the purchase of extra service as a part of a complete package. There are numerous indicators to this effect.

First, the ratio of motor oil sales at gasoline stations per gallon of gasoline sales has fallen almost continuously for three decades and in 1978 stood 80% below the 1950 level. (National Petroleum News 1979, p. 106). This decline has come largely from a shift to other retail sources of motor oil. In 1961 service stations accounted for 70% of all motor sales. By 1978 this share had fallen to 26%. Most of this market has been lost to mass merchandisers (Sears, Montgomery Ward's, etc.) whose share rose from 7% to 51% over the same time period (National Petroleum News 1979, p. 104). The decline of motor oil sales obviously implies an associated drop in demand for oil change and lubrication services, which are distinguishing features of a full service station.

Second, the percentage of gasoline sold by the self-service method has increased at an extraordinary pace over the past several years. In 1975 when the first data appeared, only 15% of the gasoline sold in the United States was sold on a self-service basis. In 1976 this rose to 30%, in 1977 to 40%, and in 1978 to 47% (National Petroleum News 1979, p. 113). One of the obstacles in this trend has been law prohibiting self-service in various states. In 1968 only 30 states allowed self-service gasoline sales in some form. By 1977, however, all but two states, Oregon and New Jersey, allowed the sale of self-service gasoline in one form or another (National Petroleum News 1979, p. 113; 1972, p. 114).

Third, as recently as 1969 approximately one in six batteries were sold at gasoline stations. By 1977 less than one in ten batteries were sold at gasoline stations (National Petroleum News 1979, p. 144; 1972, p. 157). In 1961, 40% of replacement batteries were sold at service stations; by 1971 the figure was down to 31% (National Petroleum News 1972, p. 157). Again, this decline in sales was probably associated with a decline in associated services, such as battery charging and towing.

Fourth, it is estimated that in 1978 only one in six automobile tune-ups were performed at service stations. About one-third were performed by the car owner himself (National Petroleum News 1979, p. 146). The trend in the direction of do-it-yourself and away from service station tune-ups has been continuous since data have been gathered.

I would speculate that there are four reasons for this trend. First, as the fraction of low skilled workers in our economy continues its long term decline, low skill wages rise relative to wages and prices generally and consumers are induced to purchase less low-skill services and to perform more of these services themselves. These trends have been documented in the United States since the turn of the century (Ober, 1948). The shift away from full service stations is therefore merely a part of the economy-wide shift away from purchased low-skill services to doing it yourself. Self-serve supermarkets and do-it-yourself household repair and remodeling would be other examples.

Second, this effect is reinforced by higher marginal income tax rates. Because inflation has moved taxpayers into higher brackets and because social security tax rates have risen, a worker who earns $5 per hour might easily come away with $3 or $4 after taxes. If he goes out to purchase an hour's worth of $5 per hour labor services, he must work more than one hour. Thus, he is better off pumping his own gas than he is working extra time in order to pay someone else to pump his gas.

Third, the quality of automobiles has changed: lubrication and oil changes are needed less frequently; radial tires require less frequent replacement than conventional tires. This decline in demand for services relative to the demand for gasoline means that the full service stations designed for the demands of the 50s and 60s is now overequipped to provide certain services that distinguish it from non-full service stations. Capital investment in lube bays, for example, would now appear to be excessive.

Fourth, there is the increasing specialization and convenience of competing facilities (e.g., Midas Muffler Shops). The growth of shopping centers has meant that automobiles can be left for servicing, tire changing, etc. while the owner is free to shop at other stores. Gas stations are located primarily as a convenience for motorist while he is driving. But these locations are not necessarily convenient for a person who must leave his car for a period of time.

And fifth, there is the increasing mobility of modern life. Families move more often and further away, a fact that undermines the stability contemplated in the long term implicit contract with a full service station.

While this trend away from full service stations has been occurring for some length of time it is generally believed that it accelerated about 1975. It is at this time, for example, that the move from full service to self serve gasoline accelerated at a phenomenal rate. The common interpretation is that this acceleration was due to the Arab embargo. Many observers believe that the sudden high prices caused by the embargo induced consumers to seek out less costly sources of gasoline and therefore moved consumers from full service to the gas-and-go type of station.

But this interpretation is not very satisfying. First, high and rising oil prices do not in themselves raise the premium of full service over no service gasoline. The price of gasoline per se is the same in both types of stations. If there is no change in the service premium, what motivates the customer to buy less service?

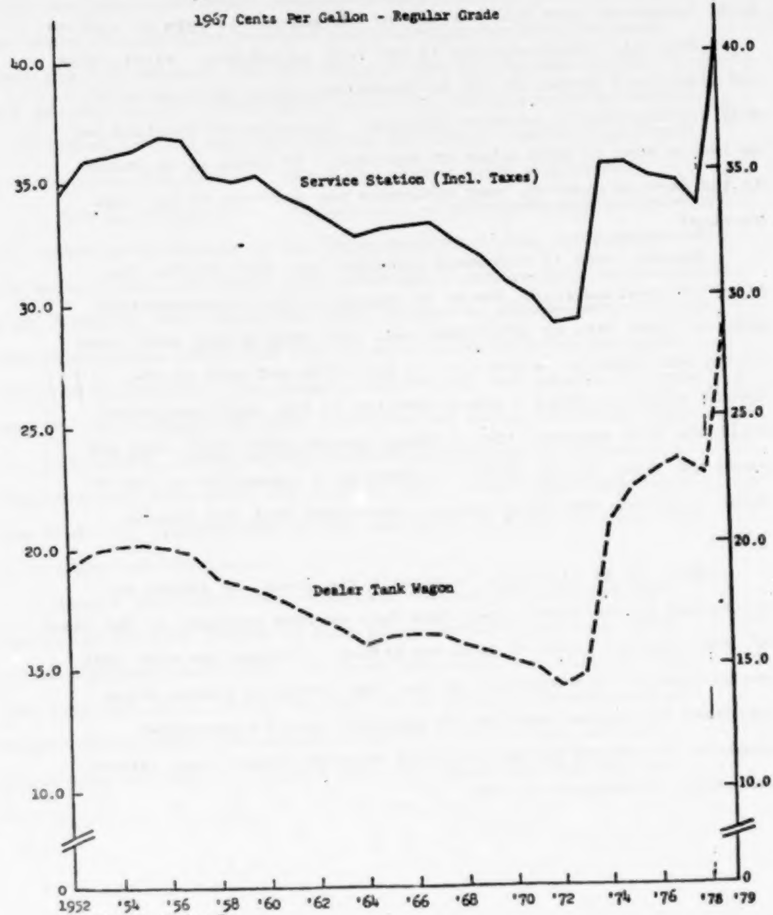
Second, even if customers purchase less service when the price of gasoline rises, how do we reconcile this interpretation with the fact that up until last year real pump prices were lower in the post-embargo period than in the 1950s and much of the 1960s? Figure 1 shows a steady decline in real gasoline prices until the Arab embargo, then a sharp upswing that still does not reach the level of the 1950's followed by a resumption of the decline, and then the sharp upswing associated with the Iranian Crisis.

Thus, it is difficult to explain the trend, or recent acceleration in the trend, away from full service stations on the basis of the overall level of gasoline prices. Perhaps the most that can be made of this argument is that the trauma of sudden price increases stimulated some search activity toward alternative gasoline sources and that the long-term movement toward less service was merely telescoped in time.

FIGURE 1

AVERAGE REAL GASOLINE PRICES* - U.S.

1967 Cents Per Gallon - Regular Grade



SOURCE: TABLE I

*Deflated By The U.S. Consumer Price Index

An alternative interpretation for the negative impact of the embargo on full service station sales lies in the federal government's response to the embargo, not the embargo itself. The embargo led to a scarcity of crude oil and petroleum products including gasoline. The market clearing price of oil and gasoline rose sharply. The response of the federal government was to put a ceiling on crude oil and gasoline prices in the United States which led in turn to both a shortage of gasoline and to a peculiar structure of prices at gasoline pumps. Elementary economics tell us that a price held below the level at which the demand and supply equate creates a shortage and that consumers will be frustrated in their attempts to purchase gasoline. This means that when a customer drives in to his service station, where he has an implicit long term arrangement with a full service dealer, he would as often as not find that his dealer did not have gasoline to sell him. This meant to the customer that the dealer had in effect broken the long term arrangement developed over a period of years. Federal regulation did not take account of the implicit contract between full service stations and its customers; the law did not allow the favoritism to established customers that such an arrangement would imply.

Furthermore, the price controls required cost-based prices. Since the prices of domestic and foreign oil varied greatly and the cost basis of gasoline at any particular station reflected cost advantages or disadvantages of the supplier, prices at the gasoline pump were mandated to be dramatically different, as much as 20¢ per gallon different from station to station. Thus, even if the customer found that his usual full service station did have gasoline to offer that gasoline might well have been priced at a far higher premium than would normally be the case. Thus, the loyalty of the full service customer could also be broken by extraordinary government-compelled differences in prices. Note that while the gas and go station faced some of the same problems it was not adversely affected by destroyed loyalty. Its customers were "shoppers" all along.

Yet another government program developed after the Arab embargo created a strong bias against full service gasoline. The entitlements program which allocated cheap domestic oil among refiners contained what is known as the "small refiners bias." This bias means that the average cost of crude oil for a small refiner is lower than for a large refiner as a matter of deliberate government policy. Small refiners more often distribute their gasoline through limited service gas-and-go facilities. Thus, not only did company operated convenience-type stations of small refiners have lower costs due to less costly marketing system but they also had lower crude costs due to subsidies under the entitlements program.

Still another government regulation associated with the price control program is the Department of Energy's rule that forces refiners to move wholesale prices on a regional basis. This means that a refiner operating region-wide cannot afford to reduce dealer tank wagon (wholesale) prices in a particular area to meet competition in that area. In this way more narrowly based local refiners and marketers have greater price flexibility and therefore can afford to be more aggressive on price and more responsive to local conditions. Local refiners and marketers operate a much higher percentage of limited service stations than the large national oil companies.

Finally, Department of Energy (D&E) gasoline allocation rules governing new outlets adversely affect dealers relative to refiner-operated outlets and jobbers in obtaining added gasoline supplies. (Department of Energy 1980, p. 103).

The upshot is that federal government policy has been hostile to the independent retailer of major brand gasoline. This does not imply that the problem facing independent dealers would not have surfaced without federal intervention. As noted above, long term economic trends appear to be working against full service retailers. In addition to the secular trend against full-service stations, there also appears to have been an overshooting in construction and a consequent glut of full service stations even prior to the embargo. This overbuilding could hardly have been the intention of the major oil companies or independent dealer since they are the ones most injured by overbuilding. On the contrary the data suggest that refiners and dealers were lured into retail expansion by rapidly rising sales and real dealer margins during the 1960s, only to discover that the stations built in response to these incentives were to come on stream at a time when dealer margins had already turned down, a decline that has been continuous and severe (with the exception of certain years when federal gasoline allocations were in effect).

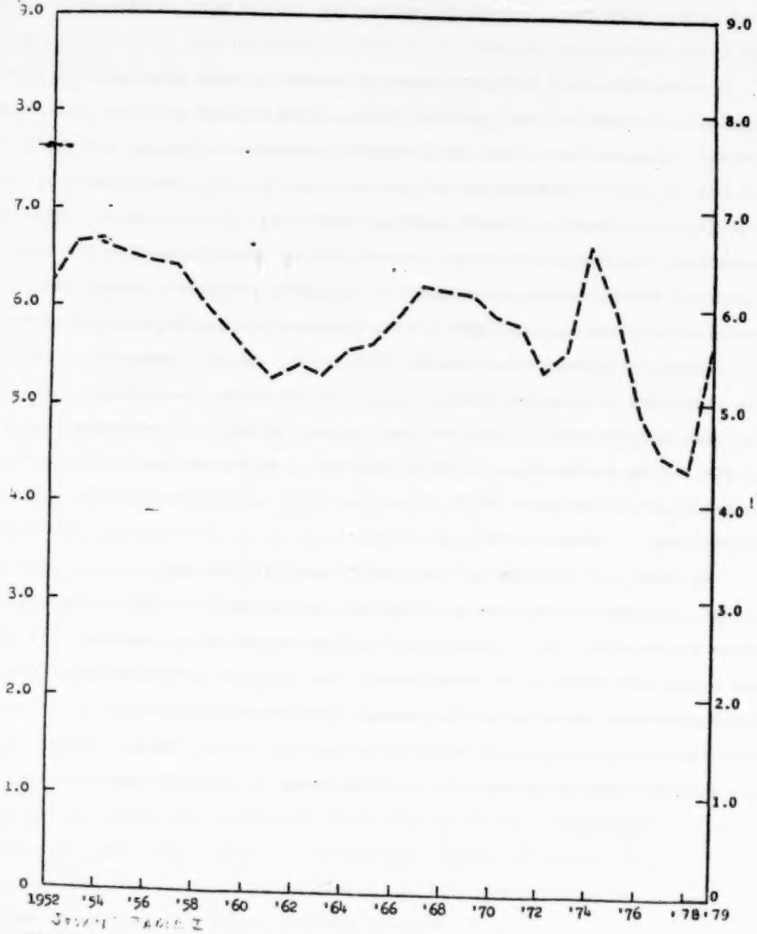
Figure 2 shows the history of retail dealer margins in the United States. The mid-sixties were relatively good years in comparison to what came just before and just after. Not surprisingly, the response to these relatively high margins was a substantial investment in marketing facilities by the larger oil companies. From 1966 to 1972 these companies invested over a billion dollars each year in marketing, something that has not occurred before or since (Chase Manhattan Bank, various issues). Marketing capital expenditures averaged 17.8% of all capital expenditures by these companies over the same years, also a figure that has never been realized in any individual year before or since (Chase Manhatten Bank, various issues). Figure 2 shows that by 1972 real margins had retreated from the late 1960s levels and in that year these same companies began drastically cutting back on marketing investments. From an all-time peak of 21.1% in 1971, the percentage of total investment by oil companies allocated to marketing fell in 1972 to 14.7%, in 1973 to 9.8%, and averaged only 3.8% from 1974 through 1977, a level that is unprecedented in postwar history (Chase Manhattan Bank, various issues).

The explanation for rising dealer margins in the 1960s presumably comes from the abundant supplies of crude oil, and hence, gasoline, available during that era. As mentioned above the real price of gasoline fell steadily in the 1950s and 1960s. From 1950 to 1960, the real pump price of regular gasoline fell 6.8%, and from 1960 to 1970 that rate of decline accelerated to

FIGURE 2

AVERAGE REAL DEALER MARGIN* - U.S.

1967 Cents Per Gallon - Regular Grade



Source: Table I

*As Deflated By The U.S. Consumer Price Index

12.6% per decade. This retail price decline was induced by a wholesale price decline that was even larger. From 1950 to 1960 real dealer tank wagon prices in the United States fell 13.4%, and 1960 to 1970 fell 16.2%.

A straightforward interpretation of events is that abundant supplies of crude oil and gasoline depressed wholesale gasoline prices. Competition at the retail level reduced pump prices, but not as fast. Consumption of gasoline grew rapidly and this, together with widening retail margins, attracted capital into marketing. By the early 1970s, however, these investments in marketing had produced an abundance of gasoline stations. When gasoline supplies became tight due to government price regulation and prices reversed themsevles in 1973 due to the Arab embargo the abundance of stations became a glut as gasoline consumption was held down by soaring prices. The number of gasoline stations in the United States began to fall precipitously in 1973 and now is estimated to be about 25 % below the level of the early 1970s (Department of Commerce 1980, p. 114).

The high real margins in 1974, 1975, and 1979 are the only significant deviations from an otherwise steady decline since 1967. These years appear to be aberrations caused by the price control and allocation program in those years. The scarcity of gasoline during the Arab embargo led the federal government to allocate gasoline among dealers beginning on January 15, 1974. Those allocations meant that dealers could not compete supplies away from one another. Price competition at the retail level could not gain either additional sales or supplies for the retail dealer. Since the only reason any seller voluntarily chooses a lower price rather than a higher price is to increase sales, the sole motivation for price competition among retail dealers was eliminated. In the fall of 1976, gasoline supplies in excess of allocation quantities became available and, with price competion at the dealer level presumably restored, dealer margins declined. Again in 1979, oil companies were forced to reinstitute allocations because of Iranian crude production cutbacks and other supply problems; high retail margins returned. When allocation disappears, retail margins will probably drop again. However, independent dealers will again achieve normal profitability when the gasoline market has fully adjusted to these new realities.

These economic cycles with their overshooting in investments are, of course, not uncommon in commodity markets. Farmers, are familiar with the hog cycle. No one could rationally accuse farmers of intentionally creating a depression in hog prices. By the same token no one can rationally accuse oil companies or retail dealers of intentionally creating a depression in retail margins. They are both due to the unavoidable fact that the future cannot be predicted perfectly, a condition that we will never overcome. While it is evident that independent dealers have suffered severely, major losses actually have been realized by the large oil companies. Of the dealer outlets directly supplied by the 40 largest refiners, most are owned by the companies and leased to dealers (Department of Energy, 1980, Table 2A-6). The capital losses associated with writing down the value of these assets are therefore mainly incurred by the oil companies, not the dealers.

This interpretation of the decline of full service stations is considerably at odds with that of the organized retail dealer associations (U.S. House of Representatives, Small Business Committee, 1980). They have argued that it is predatory pricing by the major oil companies for the purpose of eliminating dealers that is responsible for the events described. They argue that marketing operations, in particular company-operated stations, are being subsidized by the producing and refining profits of the major companies. Predatory pricing of this sort can be remedied only by preventing refiners from operating marketing facilities. Independent dealers argue that to remove these subsidies operation of retail stations must be left exclusively in the hands or either independent franchised dealers, or company-operated stations that are owned by firms without investments in production or refining. They call, therefore, for a ban on refiner ownership of retail stations, or retail marketing divorcement or divestiture (RMD) as it is known.

Is it plausible that major oil companies are attempting to drive independent dealers out of business? To answer this question, let us examine the conditions necessary for successful predatory pricing generally. Predatory pricing occurs when one firm or group of firms intentionally sets prices below long run marginal cost for the purpose of imposing losses on competing firms. The objective of this tactic is to drive the competing firms out of the market. Obviously this requires that the predatory firm be better able to withstand low predatory prices than the competing firms. This requirement is met if the predatory firm is either (1) much larger or stronger financially, or (2) markets over a much larger area than the competing firms and thus needs only incur losses selectively while the prey absorbs losses everywhere, or (3) is significantly more efficient so that the prey actually incur much larger losses than the predator. If the third condition is met, predatory pricing is obviously unnecessary since pricing at full cost (including a normal rate of return) would eventually drive out competitors anyway (and should since the competitors could only be maintained by higher than competitive prices).

Once the predator has driven competing firms out of business the assets of these firms must be acquired by the predators. Otherwise, they will be acquired by still other competitors, or could potentially be brought back into operation by the original prey. In either case, potential competition would remain to the same extent as before.

When the predator has driven competing firms from the business and acquired their assets, he must then raise prices to a level high enough to compensate for the losses incurred when prices were low and predatory, to compensate for the costs of acquiring the assets of competing firms, and finally to compensate for the risks that the strategy will fail because either firms are not driven out or because anti-trust action stops the process. The predator must be certain that prices after predation are monopolistic, not competitive. This requires that there be no competition among the predatory firms and that entry by new firms or re-entry by the prey be difficult.

If we observe price-cutting and intense competition in a market, conditions for the price-cutters to be considered potentially as predators would include:

(1) the price-cutters be large, financially strong firms, or broadly based compared to their competitors;

(2) as competing firms fail, they must be acquired by the predatory firms;

(3) there must be no competition among the price-cutters, that is, the predators must act as a cartel;

(4) it must be difficult for new firms to enter the market or former competitors to re-enter during the period of high monopoly prices that must follow to make predation rewarding.

(The presence of these conditions would not prove predatory pricing. They are necessary not sufficient. Proof would require evidence of pricing below short-run marginal cost, or pricing below long-run marginal cost together with evidence of intent to exclude competitors (Posner 1976, pp. 184-96)).

None of these necessary conditions are met in the case of retail gasoline marketing. First, the aggressive price competitors that are fingered as predatory are the company-operated retail outlet. The prey are supposedly the independent dealers. Yet company-operated stations are primarily owned by small regional or local refiners or marketers, while independent dealers are overwhelmingly supplied and financed by large financially strong national companies, which typically own much of the capital used by the independent dealer.

According to the Department of Energy, in 1972, so-called major or large integrated refiners accounted for 73.6 percent of all gasoline sales, but only 43.6 percent of sales to refiner salaried retail outlets. Small and independent refiners, who accounted for only 26.4 percent of all gasoline sales in 1972, had 61 percent of the increment in sales through refiner salaried retail outlets from 1972 to 1976 (Department of Energy 1978, p. 5). Thus, not only are small firms the largest part of the company-operated segment, they are also the fastest growing part of the company-operated segment, which suggests that they are the most price competitive. Thus, we are asked to believe either that small firms are predators against dealers backed by large financially strong firms, or that the predators are firms that have a minor and shrinking share of the segment that is aggressively price competing. Neither proposition is plausible.

The more recent Title III study confirms this point. With more accurate but non-comparable data, the study shows that in 1972 the 16 leading refiners accounted for 73.6 percent of the gasoline sold through company stores. By 1978 that share had declined to 64.1 percent. (Department of Energy, 1980, p. 42-43.)

Second, if the major oil companies are alleged to be the predator firms, then they are not acquiring the assets of the fallen prey as they are supposed to. Indeed, several major companies, including Texaco, Exxon, Gulf, and Phillips, have publicly announced decisions to abandon large market areas. Instead of acquiring marketing assets they are disposing of them.

Third, competition within the major company segment of the gasoline market is itself aggressive, and therefore, precludes the possibility of cartel pricing even if other competition were eliminated. This competition is evidenced by lack of concentration, shifting market shares among the companies, and the absence of successful price-fixing suits against them. The lack of parallelism in their behavior is demonstrated in the case at hand. The movement toward salaried retail outlets is concentrated among just five refiners (of the thirty largest) who have opened up 90 percent of the new outlets (Department of Energy 1978, p. 3). Thus, the remaining twenty-five large refiners continue to be tied almost exclusively to independent dealers, the group that is supposed to be driven out of business. Thus we are asked to believe that large refiners would operate as a cartel after successful predation while currently one part of them does the predating and another part acts as the prey.

Fourth, the condition that new entry or re-entry be difficult is not met. As mentioned above, tens of thousands of gasoline stations have been abandoned or converted to other uses. They now house bakeries, pizza parlors, pin ball machines, auto speciality shops, or just serve as parking lots. Many of these facilities would, by structure and location, serve ideally again as gasoline stations if super high future retail margins prevailed, as would be necessary to make predatory pricing successful. Remember that the predatory pricing, as alleged, is not directed at the producing, refining, or transportation segments of the industry, but only at retail marketing. With these other segments undisturbed and with such a large number of readily available competing retail facilities waiting in the wings, how could monopolistically high retail margins be sustained?

Also, the numbers simply do not support the alleged rush of major companies away from independent dealers. In spite of very small shifts in major company sales through salaried outlets from 4.6% of total sales in 1972 to 7.0% in 1976--sales to independent dealers and jobbers by major companies actually rose from 84.0% to 84.6% (Department of Energy 1978, p. II-I, II-5).

The more recent and detailed Title III study (Department of Energy 1980) shows that between 1972 and 1978 sales of the largest 40 refiners to independent dealers, jobbers and marketers stayed at constant share of 79.2. percent. The Title III universe of gasoline stations is not the same as that used in the 1978 DOE study, and thus the figures are not comparable. Nevertheless, both studies show no movement by large refiners away from the independent small business sector.

Finally, the Title III study also examines netback prices to refiners from sales through company outlets. The study focuses on six refiners in Fort Wayne, Indiana accused of predatory pricing. The study finds that four of the six refiners actually had higher implicit netback prices when transferring gasoline to company outlets, thus demonstrating the greater profitability of company outlets. Two refiners had lower netbacks from company outlets as compared to dealers, but these refiners had the highest prices at company outlets of the six, indicating high costs and inefficiency, not predatory pricing (Department of Energy 1980, Chapter III).

It should also be stressed that competition between company-operated and dealer-operated or franchised retailing of the same company's or industry's product is hardly novel. In 1978, if we look at all franchised business, 85,000 out of 452,000 establishments are company-operated, roughly 19%. If we look at gasoline service stations alone, the Department of Commerce estimates that 33,000 out of 172,000, also 19% are company-operated (Department of Commerce 1980, p. 69). Thus, the extent of company-operated facilities is roughly the same in the gasoline business as in all franchised businesses taken together. Indeed, a number of important franchised businesses have more than 20% of total establishments company operated. These include employment services, tax preparation services, convenience stores, fast food restaurants, and auto and truck rentals (Department of Commerce 1980, p. 69)

What would happen if the Congress outlawed refiner salaried stations? If enacted we would have to assume that many currently salaried stations would be up for sale or lease. Typically, though, these stations would not be suitable for an independent dealer full-service type operation because of a lack of service facilities. Given the consumer trends we have already discussed and given the physical nature of the stations and their locations the likely buyers of these stations therefore would be independent marketers who had no refining investments and who would operate these stations through salaried employees; or independent jobbers who would operate the stations with either salaried employees or lessee dealers.

However, it is possible, although seemingly less likely, that independent dealers would buv or lease these stations. The result would be higher pump prices and more service. But this additional service would not be worth the higher price to consumers who are now choosing the salaried stations (otherwise they would have chosen the dealer stations instead). If dealers wind up with these stations it is likely that dealers generally will be better off; major oil companies will be better off because they sell overwhelmingly through dealer stations; and the consumer will be considerably worse off.

Retail marketing divestiture (RMD) would reduce potential entrants and competition because even dealer oriented major companies often use salaried stations to enter new markets (as Exxon did in Florida) to absorb the risks of an unfamiliar brand that a dealer could not handle.

RMD also would reduce marketing experimentation since some companies, such as Amoco, use employee-operated stations as laboratories to try out new innovations.

RMD would increase the likelihood of cartels and price fixing because similarity or parallelism in marketing allows easier fixing of margins. When different marketing formats are used, such as full service vs. no frills, a variety of markups must exist. It is much harder under these circumstances for conspirators to agree on margins allowed for each sub-group. Generally speaking, the more homogeneous the product and its marketing, the easier that price fixing becomes.

Finally, retail marketing divestiture reduces competition in refining because it eliminates a common route of entry, namely backward integration by independent marketers.

It is clear that the independent dealers hope that the divested stations would again become dealer stations. If that did occur, pump prices would be expected to rise to the levels currently in force at existing dealer stations. If that were the case, how much more would consumers pay for gasoline? In the state of Michigan, where such legislation has been proposed, let us take the 2.6¢ per gallon difference of independent dealer prices over employee operated stations (Table 2) and multiply that by a lower bound estimate of gallonage sold by the divested stations (total state gallonage times 8%. the fraction of all stations that are refiner employee operated)[4]. We would come up with a figure of $10 million per year. This is a conservative estimate because employee-operated stations generally have much higher volumes than dealer-operated stations. Consumers, of course, will tend to get more service from these stations since they will be operated by independent dealers, but they will not get $10 million worth of service, because if they did they would have been buying at full service stations all along. In addition, it is possible that with fewer no frill stations in existence, competition will decline and prices will rise there.

It is not hard to figure out which consumers will bear this cost: those who do their own tuneups, change their own oil, pump their own gas and shop for the cheapest gas. In other words, the less affluent.

This kind of political response to a retailing innovation is nothing new in American economic life. In the 1920s and 1930s independent grocery stores and druggists fought the supermarkets and chain stores with very similar legislation, namely Robinson-Patman, chain store taxes, and fair trade laws. (Interestingly, the first state to successfully introduce RMD, Maryland, was also one of the first states to pass the chain store tax [Palamountain 1955, p. 161].) In each case, predatory pricing was alleged and in each case the legislation proposed to fight the predator was in itself anti-competitive.

It is easy to sympathize with the position of the independent dealer. His hardship is genuine. Yet looking at the situation from a societal point of view, who today would argue that we should go back to the era before supermarkets, chain stores and discount houses? Certainly there is a market for the independent retailer, whether in groceries or gasoline, but it is currently a changing and regulated market. The independent marketer will thrive again when he is fully adjusted to these changed market conditions and when the burden of federal price controls and allocation are removed.

### TABLE 1

### Average Real Gasoline Prices* - U.S.
### 1967 Cents Per Gallon - Regular Grade

| | Dealer Tank Wagon | Dealer Margin | Service Station Ex Taxes | Service Station Incl. Taxes |
|---|---|---|---|---|
| 1952 | 19.21 | 6.25 | 25.46 | 34.67 |
| 1953 | 19.91 | 6.66 | 26.57 | 35.82 |
| 1954 | 20.11 | 6.67 | 26.78 | 36.07 |
| 1955 | 20.17 | 6.54 | 26.71 | 36.25 |
| 1956 | 20.05 | 6.45 | 26.50 | 36.77 |
| 1957 | 19.80 | 6.43 | 26.23 | 36.73 |
| 1958 | 18.73 | 6.06 | 24.79 | 35.08 |
| 1959 | 18.43 | 5.83 | 24.26 | 34.93 |
| 1960 | 18.13 | 5.53 | 23.66 | 35.10 |
| 1961 | 17.63 | 5.28 | 22.91 | 34.33 |
| 1962 | 17.05 | 5.42 | 22.47 | 33.82 |
| 1963 | 16.60 | 5.33 | 21.93 | 33.17 |
| 1964 | 15.95 | 5.56 | 21.51 | 32.67 |
| 1965 | 16.28 | 5.62 | 21.90 | 32.96 |
| 1966 | 16.29 | 5.90 | 22.19 | 33.00 |
| 1967 | 16.31 | 6.24 | 22.55 | 33.16 |
| 1968 | 15.84 | 6.17 | 22.01 | 32.35 |
| 1969 | 15.58 | 6.14 | 21.72 | 31.73 |
| 1970 | 15.20 | 5.91 | 21.11 | 30.69 |
| 1971 | 14.93 | 5.84 | 20.77 | 30.03 |
| 1972 | 14.14 | 5.38 | 19.52 | 28.83 |
| 1973 | 14.64 | 5.56 | 20.20 | 29.17 |
| 1974 | 20.67 | 6.69 | 27.36 | 35.48 |
| 1975 | 22.20 | 5.99 | 28.19 | 35.50 |
| 1976 | 22.87 | 4.95 | 27.82 | 34.88 |
| 1977 | 23.42 | 4.51 | 27.93 | 34.75 |
| 1978 | 22.79 | 4.38 | 27.17 | 33.63 |
| 1979 | 28.53 | 5.64 | 34.17 | 40.37 |

* Deflated by the U.S. Consumer Price Index: 1967 = 100

Source of original data:

Gasoline Prices: Platt's Oilgram Price Service
Consumer Price Index: U.S. Department of Labor, Bureau of Labor Statistics

TABLE 2

[illegible] RESULTS OF THE PRICE COMPARISONS

| | State of Maryland | Metro Baltimore, Maryland | Metro Detroit, Michigan | State of New Jersey | Metro Philadelphia, Pennsylvania |
|---|---|---|---|---|---|
| efiner/Producer, Company-Operated | 62.9¢ | 61.7¢ | 65.1¢ | 61.7¢ | 61.7¢ |
| efiner/Producer, Lease Dealers | 67.8 | 66.3 | 67.7 | 63.1 | 65.2 |
| efiner/Producer, Open Dealers | 66.7 | 66.9 | 67.2 | 63.7 | 63.6 |
| obber, Company-Operated | 63.9¢ | 60.9¢ | -¢ | 61.3¢ | 60.5¢ |
| obber, Lease Dealers | 66.7 | - | 65.1 | 62.4 | 63.2 |
| obber, Open Dealers | 66.4 | 62.9 | 64.8 | 63.3 | 61.8 |
| on-Branded, Company-Operated | 61.1¢ | 62.7¢ | 61.9¢ | 59.2¢ | 60.4¢ |
| on-Branded, Lease Dealers | 61.7 | - | - | 60.6 | 59.2 |
| on-Branded, Open Dealers | 62.8 | 59.9 | 62.9 | 60.9 | 59.5 |
| finer/Producer, Company-Operated Versus... | | | | | |
| Refiner/Producer Lease Dealers | -4.9¢ | -4.6¢ | -2.6¢ | -1.4¢ | -3.5¢ |
| All Outlets Ex. R/P, Company-Ops | -3.8¢ | -4.5¢ | -2.0¢ | -1.4¢ | -4.5¢ |

ource: Lundberg Surveys, Inc.

2/18/78

## FOOTNOTES

1. Statement of William J. Thomas on House Bill 6648 before the Michigan House Committee on Economic Development.

2. One exception may be the retail margins allowed under the price control program, which appeared to be rather large during the 1974-75 and 1979 periods. See below, p.

3. Calculated from data in Table 1.

4. The committee of Independent Refiner Marketers estimates that 560, or 8.3 percent of Michigan's stations, are refiner employee operated.

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## APPENDIX E.—STATEMENT SUBMITTED BY DEPARTMENT OF JUSTICE

**United States Department of Justice**

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

WASHINGTON, D.C. 20530

JUN 17 1980

The Honorable Berkley Bedell
Chairman
Subcommittee on Antitrust and Restraint
of Trade Activities Affecting Small
Business
Committee on Small Business
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

In connection with H.R. 6722, the Small Business Motor Fuel Marketer Preservation Act, enclosed please find the statement of Donald L. Flexner, Acting Assistant Attorney General, Antitrust Division, when Mr. Flexner appeared before the House Subcommittee on Energy and Power on June 11, 1980. Pursuant to our previous communication, would you arrange for this statment to become part of the record of the hearings held by the Subcommittee concerning this matter. If there are any questions concerning the statement, the Department would be pleased to respond.

The Department of Justice appreciates the opportunity to submit its views on this legislation.

Sincerely,

Alan A. Parker

Alan A. Parker
Assistant Attorney General
Office of Legislative Affairs

Enclosure
cc: Honorable Dan Quayle with enclosure

U.S. Department of Justice

Washington, D.C. 20530

Testimony of

Donald L. Flexner
Acting Assistant Attorney General
Antitrust Division

Before the
Subcommittee on Energy and Power
of the
Committee on Interstate and Foreign Commerce
United States House of Representatives
Washington, D.C.

Concerning

Subsidization and Competition at the
Retail Level of the Petroleum Industry

June 11, 1980

Mr. Chairman and members of the Subcommittee, I am pleased to be here today to present the views of the Department of Justice on the subject of competition at the retail level of the petroleum industry. That industry has recently experienced the failure of large numbers of independent service station dealers and the increasing success of refiner and jobber operated gas only outlets. This has led many industry observers to conclude that both these developments are the result of a competitive defect at the retail level of the petroleum industry which, unless remedied, may result in the elimination of independent service station dealers as a class. Such a result would, of course, be unfair both to the small businessmen deprived of their businesses, and to consumers of motor fuels, who might be forced to pay higher than competitive prices for motor fuels.

While the Department shares both these important concerns, we also fear that hasty action designed to alleviate the perceived plight of independent dealers may result in the adoption of ill-conceived legislative remedies that needlessly restrict competition in the retail gasoline market without remedying the basic problems confronting independent dealers. Such action could place further upward pressure on gasoline prices, without providing independent dealers with benefits they seek. Thus, it is important to carefully analyze both the need for any potential change in this area and the potential side effects of such changes.

In presenting the Department's views on both these topics, I will begin with a discussion of the so-called downstream subsidy issue, giving special attention to the recently released first part of the Department of Energy study of that sector of the petroleum industry. I will then discuss what we at the Department believe to be the principal defects of so-called "divorcement" legislation such as H.R. 6722.

## I. Are Independent Dealers Unfairly Disadvantaged in Competing With Their Integrated Suppliers?

The most frequently expressed concern regarding the competitive structure of the retail level of the domestic petroleum industry is that it is somehow unfair or anticompetitive for refiners or jobbers to compete at retail with the independent service stations they supply. According to the proponents of this view, such integrated firms could obtain an unfair competitive advantage at the retail level by raising the prices independent dealers must pay for their gasoline supplies to artifically high levels, by transferring gasoline supplies to their own outlets at lower than market prices, or both. If any such conduct occurred, the result could be to provide the integrated firm's retail outlets with an "unfair" cost advantage over their independent rivals.

To determine whether any such conduct has been occurring, Congress enacted Title III of the Petroleum Marketing Practices Act, directing the Department of Energy, in consultation with the Federal Trade Commission and this Department, to determine the extent to which integrated firms were indeed "subsidizing" their retail operations with profits drawn from other operations. 1/ In order to make its preliminary findings available to the public as quickly as possible, DOE has divided the report mandated by Congress into two parts. Part I, which was released recently, contains an analysis of theoretical explanations for subsidization and an examination of two sources of potential evidence of such conduct: changes in the market shares of the various types of gasoline retailing nationwide, and the relative profitability of refiner sales at wholesale and retail levels in the Fort Wayne, Indiana Standard Metropolitan Statistical Area. Part II of DOE's study, to be completed later this year, will examine the relative profitability of refiner sales at wholesale and retail levels in four other metropolitan areas and will also analyze company documents subpoenaed by DOE from nine integrated refiners for evidence of specific intent to subsidize retail sales.

While the DOE report is by its terms limited to the subsidization issue, much, if not all of the analysis and evidence presented is equally applicable to the concern that integrated firms may unfairly inflate the costs of the independent dealers they supply. For this reason, and

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1/ 15 U.S.C. § 2841 (Supp. II 1978).

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equivalent to the value of the property as a service station rather than the value of the property in its highest and best economic use, what is to prevent a dealer from buying a property at the forced sale price and then subsequently selling it at its true market value for another use? Seen in this light, the "forced sale" provision of H.R. 6722 would have no long-run effect on the supply of gasoline or the number of service stations operating in any area; it would simply redistribute a large amount of wealth from one group in society to another group.

The obvious inequity of this provision of H.R. 6722 stands in contrast to the more objective rules set forth in the Petroleum Marketing Practices Act of 1978, which already protect the dealer's right to stay at a station a refiner desires to sell. The refiner must either make a bona fide offer to sell the station to the dealer, or give the dealer a right of first refusal of an offer for it made by someone else. These rules apply even when the refiner decides to withdraw from a particular area, except that the refiner has the further alternative of selling his stations in the area to anyone willing to franchise the refiner's dealers on the same terms and conditions being offered by the buyer to other dealers.

Section 3(d) would make it unlawful for any person to "restrain, interfere with, or in any way prevent the purchasing from another, the storing, or the selling of motor fuel by any dealer." It further provides that a dealer who sells motor fuel which was not supplied by the refiner whose brand name is displayed at the station, must provide "reasonable notice at the point of sale" that the motor fuel was not provided by the branded refiner.

I believe the effect of these provisions would be to encourage the long-condemned practice of passing off inferior gasoline as a branded product. The ability of the refiner to preserve the integrity of his trademark would be infringed, undercutting the value of branded marketing of gasoline. Misrepresentation and confusion of products would inevitably lead to consumer dissatisfaction and complaints which, although they would not be the responsibility of the major brand refiner in a legal sense, would nevertheless force the refiner to "make good" or to lose the loyalty of many customers. The existing antitrust laws adequately protect the right of service station dealers to purchase gasolines from outside suppliers. But if branded marketing is to be sustained, the refiner must be permitted to require that all dealers displaying its trademarks maintain adequate supplies of each of its branded motor fuels to meet customer demands.

## II. AN ANALYSIS OF COMPETITION IN GASOLINE MARKETING IN THE U.S.

It appears obvious that the major concerns of the proponents of H.R. 6722 grow out of (a) the decline in the number of service stations in the U.S. since 1972; (b) the rise in the number of refiner-operated stations over that same period; and (c) a perception that the system of dual distribution of gasoline by refiners through independent businesses and simultaneously through refiner-operated stations is inherently anticompetitive. These concerns are understandable,but much of the information which has been asserted to establish the need for a legislative response of the kind represented by H.R. 6722 is open to serious dispute. The oil industry has been described as "highly concentrated" or "monopolistic". It has been asserted that the industry has set forth on a strategy of "predatory pricing" with the objective of driving not only the independent dealers but also the jobbers and private brand marketers out of the market in order to "monopolize the gasoline industry."[1] While these arguments have a great emotional appeal, I believe that an objective consideration of the facts must lead one to conclude that the arguments are strained and that the case for extraordinary legislative action at this time is not well grounded.

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[1] See, for example, F. Allvine, J. Houston, and O. Phillips, The Case for Legislative Relief from the Impending Destruction of Small Business and Competition in the Gasoline Industry, January 22, 1980 (revised February 1980), p. 2 ff.

A. The Status of Competition in the U.S. Oil Industry

The major research studies and investigations of the U.S. oil industry conducted over the past decade, including my own research, have concluded that the industry is workably competitive. Among the most important studies and reports which support this conclusion are:

T. Duchesneau, Competition in the U.S. Energy Industry, A Report to the Energy Policy Project of the Ford Foundation, Cambridge: Ballinger Publishing Co., 1975.

Economic Report: Concentration Levels and Trends in the Energy Sector of the U.S. Economy, Staff Report to the Federal Trade Commission, March 1974.

W. Johnson, Competition in the U.S. Oil Industry, Energy Policy Research Project, George Washington University, 1975.

R. Jones, W. Mead, and P. Sorensen, "Free Entry into Crude Oil and Gas Production and Competition in the U.S. Oil Industry," Natural Resources Journal, October 1978.

R. Mancke, "Competition in the Oil Industry," in E. Mitchell (ed.) Vertical Integration in the Oil Industry, Washington, D.C.: American Enterprise Institute, 1976.

J. Markham, et al., Horizontal Divestiture and the Petroleum Industry, Cambridge: Ballinger Publishing Co., 1977.

The problem with the monopoly hypothesis, as it is proposed for the U.S. oil industry, is that it is contradicted by the most important economic indicators of competitive market structure and performance: (a) concentration levels and trends; (b) levels of profitability; and (c) trends in the real price of gasoline over the past three decades. We shall look at each of these aspects of the industry's record in turn.

1. Concentration Levels and Trends

Concentration ratios measure the proportion of an industry's sales (or other aspects of market dominance such as capacity or reserves) which are controlled by the largest firms in the industry. Routinely, concentration ratios are reported for the top four and the top eight firms in an industry.

These ratios are important indicators of industrial structure. They reflect the general view among economists that the intensity of competition is related to the number of firms in the market and their market shares.

Concentration ratios for the major sectors of the U.S. oil industry are reported in Table 1. For comparison, concentration ratios are also reported (in averages) for 292 U.S. manufacturing industries. The most striking conclusions to be drawn from the data in Table 1 are:

a. both the four-firm and the eight-firm concentration ratios for all sectors of the oil industry have fallen over the period from 1970-72 to 1978.

b. compared to all U.S. industry, concentration ratios in the oil industry are much lower at the four-firm level, and about the same or lower at the eight-firm level.

These data support the conclusion that the oil industry is workably competitive in its structure and that trends in concentration in the industry over the past decade are indicative of an increasing degree of competition at all levels.

2. Rates of Profitability

The most widely-accepted measure of profitability for an industry is the rate of return on stockholders' equity. If an industry possesses monopoly power, that power should be reflected in sustained higher-than-average rates of return on equity. Table 2 compares the rate of return on equity for the oil industry with the rate of return earned by all U.S. industry over the twenty year period, 1960-1979. The data indicate that the oil industry has earned almost exactly the same rate of return (on average over the twenty years) as was earned by all U.S. industry. In only eight of those years did the rate of return for the oil industry exceed the rate earned by all industry. Significantly, when the rate of return for the oil industry rose above normal during the period of the

Arab oil embargo (1973-74), it did not remain at that level in subsequent years but returned to normal under the force of competitive market pressures. These same forces will work to reduce the currently higher rates of return being earned by oil companies back to their normal levels over the next few months, if the experience of the past is repeated, as I believe it will be.

### 3. Trends in Real Gasoline Prices

The classic symptoms of monopoly are restrictions on output which lead to increases in consumer prices. Again, the history of the U.S. oil industry contradicts this model of monopoly behavior. Over the period 1950-1972, gasoline supply in the U.S. rose at about 3% per year, much more rapidly than the rate of population growth. At the same time, the real price of gasoline was falling at an average rate slightly below 1% per year for the period 1950-59 and at an average rate of about 1.5% per year for the period 1960-1972. The real net-of-tax gasoline price in the U.S. (using 1967 as the base year = 100) was 28¢ per gallon in 1950. This price had fallen to 19¢ per gallon in 1973 and did not rise above the 1950 level until 1979.[1] This is scarcely the pattern of supply response and pricing that one would expect to see in an industry characterized by monopoly. It is consistent with the behavior of a competitive industry in which reductions in input costs and economies of scale in production are passed on to consumers in the form of lower prices.

In summary, the available data support the conviction of the leading U.S. researchers that the oil industry is workably competitive. The hypothesis that the industry has suddenly developed either the coordinated power or the intention to create a "monopoly in the gasoline industry" is not supported by the evidence of the industry's behavior and performance over the past three decades. There are more reasonable explanations for the current problems in the U.S. gasoline industry than the explanation based upon a monopoly hypothesis.

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[1] Source: U.S. Department of Commerce, Survey of Current Business.

## B. Trends in Numbers of Service Stations and in Shares of the U.S. Gasoline Market Since 1972

A misinterpretation of available data has led some writers to assert the erroneous conclusion that more than 100,000 dealers have left the gasoline industry over the period 1972-79.[1] This conclusion has been based upon a comparison of the number of dealers who were supplied directly by refiners in these years. But the DOE data used in making the comparison exclude all dealers supplied by jobbers.[2] Since there has been a significant increase in the volume of gasoline sales to jobbers since 1972, this indicates that the number of dealers supplied by jobbers has also increased. Thus the decline in the number of dealers since 1972 is exaggerated in the DOE data. The truth of this statement is shown in data provided by the U.S. Department of Commerce which gives a complete count of U.S. service stations, whether supplied by a refiner or a jobber.[3] According to the Department of Commerce, the total number of service stations in the U.S. hit a peak of 226,459 in 1972. The (revised January 1980) count of service stations for 1979 was 164,800.[4] This represents a loss of 61,659 stations, or an attrition rate of about 4% per year.[5]

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[1] See Allvine, et al., op.cit., p. 5.

[2] See DOE, "Universe Estimates of Branded Motor Gasoline Sales, Report 5". Table 2A-6 (below, reprinted from the Title III Study, Part I) also reports only the numbers of dealers supplied directly by refiners.

[3] The count is reported in "Franchising in the U.S. Economy" which is published each year in the month of January.

[4] National Petroleum News, March 1980, p. 29, and the NPN Factbook, 1979, p. 112.

[5] These were mainly low-volume, high cost stations which were made uneconomic by changes in the demand for and supply of gasoline after 1972. Increases in the costs of land, labor, and capital used in service stations made it imperative that the average monthly volume of gasoline sold at each station had to increase. Table 2A-6 (below) indicates that remaining lessee dealers saw their average volume of gasoline sales rise from 27,900 to 42,500 gallons per month from 1972 to 1978. Obviously these dealers are much more healthy economically as a result of this change.

Since the number of refiner-operated stations has increased by about 2300 since 1972,[1] we might conclude that the true loss in the number of service station dealers was about 64,000. But even this number does not give a fair picture of the changes which have occurred in the marketplace. These data do not include the thousands of convenience stores, chain stores, etc. which have moved into gasoline retailing since 1972.[2] Most of these sellers are also small businesses and franchisees, and their success should be noted as an offset to the loss of the service station dealers who have left the industry since 1972.

Some idea of the significance of these "uncounted" gasoline retail outlets may be gained by considering data I collected for the state of Florida in 1979. Unlike many other states, Florida makes a precise count of all retail outlets selling gasoline each year.[3] This count indicates that the total number of such outlets has fallen from 13,824 in 1972 to 12,073 in 1978--a decline of 12.7%. But the Department of Commerce estimate of the number of "service stations" in Florida showed a decline from 9,199 in 1972 to 6,945 in 1978--or a loss of 24.5%. While Florida may not be typical of the U.S. as a whole, it seems reasonable to conclude that if one ignores the many other businesses which sell gasoline in the U.S. but which are not "service stations", this will lead to an exaggeration of the loss in the numbers of small businesses in the U.S. which has occurred as a result of our post-1972 energy problems.

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[1] See Table 2A-6 (below), which gives data for 1972 and 1978. The numbers in Table 3 (below) suggest that the number of refiner-operated stations in 1979 was below that of 1978.

[2] The Department of Commerce counts only those businesses which obtain more than 50% of their income from the sale of gasoline and related products as "service stations." The National Petroleum News reports that "There are at least 15,000 convenience stores selling gasoline and probably thousands of others, but no one has more than a guess about them at this time." See NPN, March, 1980 page 29.

[3] Each retail outlet selling gasoline in Florida must obtain a permit from the Florida Department of Agriculture.

As noted earlier, the number of company-operated stations for the 28 largest U.S. refiners has increased in recent years, from 11,521 in 1972 to 13,790 in 1978, an increase of 19.7%.[1] This increase was not uniform for all refiners, however. Indeed, the largest four refiners--Exxon, Amoco, Shell and Texaco--actually reduced the number of their company-operated stations by 46%. And in total the 12 largest refiners reduced the number of their company-operated stations by 9%. As data prepared by DOE indicate, the largest increase in the number and proportion of company-operated stations among the 28 largest U.S. refiners was observed among a group of relatively small refiners, including Kerr-McGee, Charter, Clark, and Coastal States.[2] These results indicate that refiners are not pursuing a parallel strategy in respect to company stations. While some refiners (large and small) are greatly reducing their investments in company stations, others are increasing their commitments to direct marketing of gasoline.

This interpretation is strengthened by the findings of a study conducted by DOE which shows that eight refiners account for 90 percent of the increase in gasoline sales through company stations among the 28 leading refiners, and four of those eight refiners account for approximately 65 percent of the increase from 1972 to 1979. Based upon these results, the authors of the DOE study concluded, "...we could not support the hypothesis that there is an industry-wide movement to refiner-operated outlets."[3]

The argument that the major refiners have reduced the share of gasoline distributed to independent businesses in order to increase sales at refiner-operated stations is contradicted by the findings of the recently released Title III Study, Part I. In order to correct for errors in market shares of gasoline which were derived from the DOE reports entitled Petroleum Market Shares[1], the DOE Office of Competition carried out a nationwide survey of the 40 largest refiner-marketers. The results of that survey are reported in Table 2-2, below.[2] The data indicate that the four largest refiners (Exxon, Amoco, Shell and Texaco) have actually reduced the share of gasoline sales through their company-operated stations from 4.4 to 4.0 percent over the period 1972-1978. For the 40 largest refiner-marketers in aggregate, there has been an increase in the share of gasoline sold through company-operated stations amounting to 5.1 percent (the total share rising from 6.7 percent to 11.8 percent). Lessee and open dealers which were supplied directly by refiners showed a loss in share of gasoline sales amounting to 11.5 percent (the total share falling from 46.3 percent to 34.8 percent). But the share of gasoline sales to branded jobbers rose by 6.0 percent (from 21.0 to 27.0 percent) and the share of gasoline sales to independent marketers also rose by 5.4 percent (from 11.9 to 17.4 percent). Thus the relative share of gasoline sold by jobbers and the relative share of gasoline sold by independent marketers both rose by more than the relative share of gasoline sold directly by refiners through their company stations. And the total share of gasoline sold by dealers, jobbers, and independent marketers taken together was almost exactly the same in 1978 as it was in 1972.[3] These data do not support the hypothesis that refiners are attempting to take over the gasoline market in the U.S. by driving out their independent competitors.

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[1] See Table 2A-6, below. This table is reprinted from The State of Competition in Gasoline Marketing, Part I, The Effects of Refiner Operations at Retail, the Title III Study (DOE/PE-0019-01), April 30, 1980.

[2] Ibid.

[3] R. Fenili and J. Delaney, Trends in Company Stores, DOE, December 1979.

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[1] DOE/EIA-0066, issued monthly. The data used in this report include only gallonage sales at "primary locations" at which more than 50% of the revenue comes from gasoline and oil sales. Secondary locations are excluded for non-refiners. Thus the market shares attributed to refiner-operated stations are exaggerated.

[2] Reprinted from the Title III Study, Part I, (April 30, 1980).

[3] Taking account of rounding in the totals, the share of gasoline sold by these independent businesses was 79.2% in 1972 and 79.2% in 1978. See Table 2-2, below.

To provide additional perspective on trends in company-operated stations in the U.S. and to further illustrate the point that refiners are not pursuing a parallel strategy in respect to direct marketing of gasoline, I have prepared Table 3 (below), which is based upon recent data concerning the number of primary and secondary brand stations operated in 26 states of the U.S. by fifteen of the largest refiners, including Amoco, Arco, Chevron, Citgo, Conoco, Exxon, Gulf, Mobil, Phillips, Shell, Sohio-BP, Sun, Tenneco, Texaco and Union.

The data in Table 3 indicate that these fifteen large refiners directly operated only 4.24 percent of the 109,519 stations in the 26 listed states which sold gasoline under their primary or secondary brand names in 1978.

The variety of marketing strategies being pursued by these fifteen large refiners is indicated in the non-parallel character of the individual state percentages. Generally, it can be said that company-operated stations are not a major factor in the market for most of the states listed. It is significant, also, to note that the number of company-operated stations for these refiners has declined significantly both in total and for most of the individual states listed since 1977.[1]

In summary, the argument that refiners are attempting to achieve a "monopoly of the gasoline market in the U.S." through increases in the number and market share of their company-operated stations is not supported by the evidence. Refiners are not pursuing a parallel strategy in respect to direct marketing of gasoline. The largest refiners have reduced their commitment to company-operated stations while medium-sized and small refiners have increased the number of such stations. The total market share of the 40 largest refiner-retailers has risen since 1972 but is still only 11.8 percent. This share of the market is certainly consistent with the presence of competition in the gasoline industry and is evidence of the wider range of choices open to consumers in an industry characterized by a variety of marketing strategies.

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[1] See the footnotes to Table 3 which indicate that the 1977 count of company-operated stations is not complete. Thus the decline in the number and percentage of such stations from 1977 to 1979 is actually larger than is implied by the numbers in Table 3.

### C. The Subsidization Issue

The argument that refiners are subsidizing their company-operated stations is not new. It has been around since the 1930's. The most popular version of the subsidization argument asserts that an integrated refiner can (profitably) lose money at the marketing level and make it up at some other level. This is not true today and was not even true in the days of the oil depletion allowance (pre-1975). It is clearly not profitable to sell gasoline at a net-of-marketing-costs price which is below that which could be obtained from other buyers in the marketplace. The subsidy argument has gained credibility from the fact that some major refiners in fact lost money on marketing investments made in the 1960's and early 1970's. But these investments were made on the basis of an expected 4-6% growth in the size of the gasoline market annually. Such projections were shattered by the Arab oil embargo and the rapid run-up in gasoline prices. Companies which had only recently entered new marketing areas (such as Phillips and Gulf) were forced by the new economic realities to withdraw from these areas, and even long-established marketers (such as Texaco and Exxon) found that they could no longer profitably operate in some areas of the country. These losses were not anticipated when the initial investment decisions were made and they therefore cannot logically be described as subsidies.

The appearance of refiner subsidization often arises out of government regulations, in particular DOE limitations on the permissable retail markups at stations operated by the major refiners and the effects of the entitlements system in lowering the costs of small refiners and refiners which process Alaskan crude oil. In many cases, allegations of subsidization by the major refiners are based upon misperceptions of the facts, for the stations cited as representating refiner subsidization are, in fact, operated by jobbers.[1]

Subsidization as part of a strategy of predatory pricing would make sense only if the potential gains to be reaped in future years (when monopoly prices could be charged) exceeded the present losses which would be incurred. Given free entry into gasoline retailing, and in view of the probability of antitrust action to correct for any acquired monopoly power, a predatory pricing strategy is highly unlikely. One must wonder, finally, why the major refiners who have invested billions of dollars in a distribution system based upon independent dealers and jobbers would seek to destroy these same independent businessmen whose success is so obviously critical to the success of the refiners themselves.

In any case, the initial evidence provided by the Title III study contradicts the hypothesis of subsidization. The analysis shows that the only refiner-operated stations in Fort Wayne, Indiana which were losing money in their retail operations were the two highest cost and highest price stations, and these stations were losing their market share.[2] These stations were not involved in predatory pricing; they were simply inefficient and could not cover their costs even when charging higher-than-competitive prices.

In summary, neither economic analysis nor the empirical evidence supports the subsidization hypothesis. Since much additional data and evidence will be provided in Part II of the Title III Study (to be completed later this year), including an analysis of alleged subsidization by refiners in Atlanta, Houston, Boston and Los Angeles and by jobbers in Atlanta and Los Angeles, legislation which is based in any way upon a subsidization hypothesis would appear to be ill-advised at this time.

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[1] See the Title III Study, Part I, p. 78.

[2] Ibid., Chapter III.

## III. THE EFFECTS OF GOVERNMENT REGULATIONS ON COMPETITION IN GASOLINE MARKETING

Government regulations have created significant distortions and inequities in allocations of gasoline, in costs of crude oil to different refiners, and in permissable retail markups and prices. The subject of government regulation of gasoline is too large to be covered in any detail here. In what follows, only some of the most important issues will be discussed and these will be treated in a summary manner.

### A. The Base Period for Allocations

On March 1, 1979, the DOE changed the allocation base period from the corresponding month of 1972 to the corresponding month of 1978 for the months of March, April, May and June. Effective May 1, 1979, DOE announced a new base period of November 1977-October 1978. The last two months of 1978 were not included in the base period because they showed abnormal sales and distribution patterns.

A change in the base period was critically needed to reflect changes in the marketplace which had occurred since 1972.[1] In truth, any base period is arbitrary but the older the base period, the more likely the probability that it will fail to reflect the realities of the situation. The effect on relative shares of total gasoline allocations of the change in the base period was to decrease the relative allocation share of dealers supplied directly by refiners

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[1] This conclusion is supported by a recent report by the Comptroller General, Gasoline Allocation: A Chaotic Program in Need of Overhaul, April 23, 1980.

(by 7.6 points between 1974 and 1978) but to increase the relative share of the allocation base going to jobbers and chain retailers (by 3.9 points). The relative share of the allocation base going to refiner-operated stations increased by 1.0 points in total, but the share of allocations to company-operated stations of the eight major refiners actually decreased slightly.[1] In summary, the change in the allocation base has shifted allocation rights from dealers to other independent businesses (jobbers and private brand marketers), reflecting changes in the nature of wholesale distribution of gasoline in the U.S. since 1972. Refiners received only a small increase in allocations for their company-operated stations; indeed, the largest refiners saw their share of the allocation base decline. These facts do not support the argument that refiners have manipulated the allocation system to increase the share of gasoline supplies going to their company-operated stations.

### B. Ruling 1976-5

Ruling 1976-5 provides that existing service stations cannot have their base period volumes adjusted to reflect new investments in the property or changes in its character (as, for example, a shift from full service to self-service). This rule severely damages the ability of dealers to adjust to changes in the marketplace and to increase the volume of gasoline sold at existing stations through new investments. Paradoxically, while as a practical matter an existing station cannot get an adjustment to its base period volume, a new station receives generous treatment under the DOE regulations. Under DOE "Guidelines for Evaluation of Applications for Assignment of Supplier and Base Period Use to New Gasoline Retail Sales Outlets," a new self-serve unit will qualify for the same allocation as the nearest self-serve unit having approximately the same number of pumps. Thus while existing stations may be crying for increased allocations in order to accommodate to the new self-serve mode of operation, they will receive nothing while a newcomer to their market may be accorded the right to buy a volume of gasoline far in excess of that enjoyed by the existing dealers.

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[1] See the Title III Study, Part I, p. 101.

The problems of the dealers are exacerbated by other DOE rules which are usually described as "upward certification-no downward certification." Under these rules, a jobber has the absolute right of upward certification to his refiner-supplier for any new DOE assignments he has received. Thus a jobber may receive generous allocations for new stations, whether they are operated by himself or by a dealer, at the expense of the other dealers supplied by the refiner. But the jobber is not required to "downward certify" when he loses an existing customer and, thus, he continues to receive a volume of gasoline for an account he no longer serves. Thus the jobber's customers may receive 100% (or even more) of their allocation for a month during which the refiner's allocation to its dealers is well below 100%.

C. Gasoline Pricing Regulations

DOE pricing regulations have had the effect, during certain periods, of holding prices at company-operated stations below those permitted to dealers, creating an anomolous situation in which refiners are forced to undercut their dealers' prices.This has led to many complaints of subsidization and unfair competition from dealers, who are forced either to cut their own margins or to lose market share. Where dealers have been forced to cut their margins below the legally-permissable level, they are no longer permitted to "bank" any of their unrecovered costs. Since an existing dealer cannot receive additional volumes of gasoline to sell at the lower price, the loss of his margin may result in the dealer being forced to operate his station at a loss.

D. The Entitlements System

The purpose of the DOE entitlements program is to reduce differences in crude oil acquisition costs for refiners and thus to more nearly equalize gasoline buyers costs for dealers served by different refiners. Like all other forms of price regulation, the entitlements program has not been able to achieve complete equality among wholesale buyers of gasoline. Major problems have arisen from (a) the high "spot market" price for some foreign crude oil which was bought by certain refiners but which was not equalized in price to other oils by the existing entitlements, (b) the provision of entitlements benefits to small refiners in addition to those given other refiners, and (c) the absence of any entitlement obligation for price-controlled Alaskan North Slope crude, which has reduced the net cost of this oil below that of competitive crude oils. The effects of these three problems have been to create large disparities in the net cost of crude oil for different refiners and, as a result, to lead to a situation where gasoline prices in a given market may differ by a substantial amount, even when all stations are pricing at their legally permitted levels. This situation has denied certain dealers an opportunity to compete on the same terms in the marketplace.

In summary, government regulations are responsible for many serious distortions and inequities in gasoline distribution and pricing. H.R. 6722 would thrust the federal government even more deeply into regulation of the gasoline industry. Since the government is the cause of the most serious anticompetitive restraints in the industry, it would seem wise to allow the existing regulations to be phased out as scheduled and then give the free market an opportunity to work again in this industry before adopting new and possibly more dangerous forms of government regulation.

CONCLUSIONS

H.R. 6722 is unnecessary and unworkable. It would have serious anticompetitive effects. It is not justified by the evidence relating either to the history of competition in the gasoline industry since World War II or the changes in the gasoline market which have occurred since 1972. In more specific terms, the various provisions of H.R. 6722 would have these effects:

a. The divorcement of large and medium-sized refiners from direct marketing of gasoline would eliminate a major competitive force in the gasoline market and lead to higher consumer prices.

b. The volume and pricing restrictions on small and independent refiners would severely undercut the ability of these firms to compete aggressively in the marketplace and to enter new markets.

c. The "rack pricing" provisions would put jobbers and wholesalers out of business and would raise the threat of criminal prosecution for small and independent refiners who were simply attempting to meet the competition in the market. These provisions would inevitably result in the decline of branded marketing of gasoline in the U.S., severely damaging the ability of branded dealers to continue to succeed in the market.

d. The provision giving dealers the right to buy service station properties leased by them which are proposed for sale by refiners at a price to be fixed by an outside appraisal is unjust and inequitable. It will not result in any long-run increase in the supply of gasoline or the number of service stations in operation in any area. It will merely transfer a great amount of wealth from one group in society to another group. It will also thrust the federal government into a new and potentially dangerous form of regulation of the private capital market in the U.S.

e. The provision giving dealers additional rights to obtain gasoline from outside suppliers will lead to misrepresentation and confusion of products sold, consumer complaints, and major additional costs and risks for refiners wishing to maintain the system of branded gasoline marketing. To the extent that this provision dilutes or removes from the market the important attributes of branded marketing of gasoline such as the assured standard of quality for products sold, both consumers and branded dealers will be losers.

There is not a sufficient factual or economic basis for a major restructuring of the gasoline distribution and marketing system in the U.S. at this time. Congress should approach this legislation with extreme caution. Our experience with government regulation of the gasoline market suggests that new and more pervasive regulation of the industry would be anticompetitive and anti-consumer.

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Table 1

Concentration Ratios for
Major Sectors of the U.S. Oil Industry
and for 292 U.S. Manufacturing Industries

| | Top 4 Firms (% of Total) | Top 8 Firms (% of Total) |
|---|---|---|
| U.S. Crude Oil Production (1978)[1] | 23.7 | 40.8 |
| (1970)[1] | 26.3 | 41.7 |
| U.S. Crude Oil Reserves (1978)[1] | 36.4 | 55.1 |
| (1970)[2] | 37.2 | 63.9 |
| U.S. Refining Capacity (1978)[1] | 30.9 | 52.5 |
| (1970)[1] | 32.5 | 57.5 |
| U.S. Oil Pipelines (Trunk Line (1978)[1] | 30.6 | 54.9 |
| Barrel Miles) (1972)[1] | 33.7 | 55.6 |
| U.S. Refined Product Sales (1978)[1] | 28.6 | 47.3 |
| (1970)[1] | 34.0 | 57.3 |
| U.S. Motor Gasoline Sales (1978)[3] | 29.4 | 49.4 |
| (1970)[3] | 30.7 | 54.6 |
| 292 U.S. Manufacturing Industries (1970)[4] | 41.5 | 54.3 |

[1] For detailed explanation of Data Sources see: Market Shares and Individual Company Data for U.S. Energy Markets: 1950-1978, Discussion Paper #014R, American Petroleum Institute, November 1979.

[2] T. Duchesneau, Competition in the U.S. Energy Industry, Ballinger, 1975, p.39.

[3] Market share data from the Lundberg Survey, as reported in National Petroleum News Fact Books.

[4] W. Mueller and R. Hamm, "Trends in Industrial Market Concentration," Review of Economics and Statistics, Nov. 1974, pp. 511-20.

Table 2

### A Comparison of Rates of Profitability in the U.S. Oil Industry as Compared to All Manufacturing Industry 1960-1979

| | Rate of Return on Equity (%) | |
|---|---|---|
| Year | Petroleum Industry | All Industry |
| 1960 | 8.6 | 9.1 |
| 61 | 8.4 | 8.3 |
| 62 | 8.5 | 8.9 |
| 63 | 9.5 | 9.1 |
| 64 | 9.0 | 10.5 |
| 1965 | 10.4 | 11.8 |
| 66 | 12.3 | 12.7 |
| 67 | 11.2 | 11.3 |
| 68 | 11.8 | 11.7 |
| 69 | 10.5 | 11.3 |
| 1970 | 10.3 | 9.5 |
| 71 | 9.0 | 9.1 |
| 72 | 9.4 | 10.3 |
| 73 | 13.4 | 12.4 |
| 74 | 16.8 | 13.6 |
| 1975 | 11.9 | 11.6 |
| 76 | 13.0 | 13.3 |
| 77 | 13.1 | 13.5 |
| 78 | 13.4 | 14.3 |
| 79 | 19.1 | 15.9 |
| Average, 20 years | 11.48 | 11.41 |

Source: *Fortune Magazine*, Directory of the 500 Largest U.S. Industrial Companies, Issues Dated 1961-1980.

TABLE 2A-6

Changes in the Number and Average Monthly Volume of Retail Outlets for Selected Refiner Groupings, 1972-1978

| Refiner Group | Company Stores 1972 | Company Stores 1978 | Lessee Dealers 1972 | Lessee Dealers 1978 | Open Dealers 1972 | Open Dealers 1978 |
|---|---|---|---|---|---|---|
| Group I | | | | | | |
| Number | 2,307 | 1,251 | 40,462 | 26,195 | 28,816 | 18,290 |
| Avg. Monthly Volume | 49.2 | 94.6 | 31.3 | 47.5 | 8.2 | 16.3 |
| Group II | | | | | | |
| Number | 907 | 1,917 | 35,623 | 18,176 | 36,061 | 25,654 |
| Avg. Monthly Volume | 55.3 | 81.4 | 25.4 | 40.6 | 9.6 | 15.0 |
| Group III | | | | | | |
| Number | 3,208 | 2,652 | 18,903 | 7,832 | 12,115 | 6,105 |
| Avg. Monthly Volume | 35.8 | 63.9 | 20.9 | 35.0 | 10.1 | 17.3 |
| Group IV | | | | | | |
| Number | 2,058 | 2,895 | 5,874 | 1,728 | 5,505 | 2,101 |
| Avg. Monthly Volume | 59.9 | 95.0 | 20.4 | 18.8 | 6.4 | 5.5 |
| Group V | | | | | | |
| Number | 427 | 799 | 1,742 | 1,515 | 1,343 | 1,443 |
| Avg. Monthly Volume | 27.3 | 72.5 | 70.0 | 47.3 | 17.0 | 18.9 |
| Group VI | | | | | | |
| Number | 733 | 2,136 | 2,551 | 1,006 | 74 | 26 |
| Avg. Monthly Volume | 39.2 | 57.6 | 46.1 | 35.3 | 17.0 | 89.0 |
| Group VII | | | | | | |
| Number | 788 | 778 | 460 | 259 | 96 | 65 |
| Avg. Monthly Volume | 53.9 | 109.0 | 46.3 | 71.6 | 23.9 | 19.3 |
| TOTAL | | | | | | |
| Number | 11,521 | 13,790 | 106,430 | 57,171 | 85,150 | 54,752 |
| Avg. Monthly Volume | 47.4 | 81.3 | 27.9 | 42.5 | 9.4 | 16.1 |

Note: Gasoline monthly volume in thousands of gallons. These data include all outlets the refiner supplies directly, both primary and secondary locations.

*Total includes Groups I through Group VIII.

Source: EIA-151.

TABLE 2-2

CHANGE IN THE RELATIVE SHARE DISTRIBUTION BY CLASS OF TRADE FOR LARGEST 40 REFINERS

| Refiner Group | Direct Sales to End Users | | | Company-Operated Retail Outlets | | | Lessee Dealers, Supplied Direct | | | Open Dealers, Supplied Direct | | | Sales to Branded Jobbers | | | Unbranded Sales to Independents | | | Sales to Other Refiners | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1972 | 1978 | Change | 1972 | 1978 | Change | 1972 | 1978 | Change | 1972 | 1978 | Change | 1972 | 1978 | Change | 1972 | 1978 | Change | 1972 | 1978 | Change |
| Group I | 11.5 | 5.6 | -5.9 | 4.4 | 4.0 | -0.4 | 49.0 | 42.1 | -6.9 | 9.3 | 10.1 | 0.8 | 21.9 | 34.6 | 12.7 | 1.4 | 2.5 | 1.1 | 2.4 | 0.9 | -1.5 |
| Group II | 13.5 | 10.0 | -3.5 | 2.6 | 7.3 | 4.7 | 47.5 | 34.7 | -12.8 | 18.1 | 18.1 | 0.0 | 13.2 | 16.2 | 3.0 | 3.9 | 12.1 | 8.2 | 1.2 | 1.6 | 0.4 |
| Group III | 6.6 | 4.8 | -1.8 | 8.7 | 12.2 | 3.5 | 29.8 | 19.8 | -10.0 | 9.3 | 7.6 | -1.7 | 28.9 | 34.8 | 5.9 | 10.3 | 15.4 | 5.1 | 6.4 | 5.3 | -1.1 |
| Group IV | 5.3 | 1.6 | -3.7 | 14.3 | 26.2 | 11.9 | 13.9 | 3.1 | -10.8 | 4.1 | 1.1 | -3.0 | 17.6 | 24.6 | 7.0 | 37.0 | 40.2 | 3.2 | 7.8 | 3.3 | -4.5 |
| Group V | 2.0 | 1.2 | -0.8 | 3.3 | 10.5 | 7.2 | 34.1 | 12.9 | -21.2 | 6.4 | 4.9 | -1.5 | 18.1 | 16.0 | -2.1 | 21.8 | 40.4 | 18.6 | 14.4 | 14.0 | -0.4 |
| Group VI | 0.1 | 0.1 | 0.0 | 6.4 | 27.2 | 20.8 | 26.4 | 7.8 | -19.5 | 0.3 | 0.5 | 0.2 | 12.5 | 14.4 | 1.9 | 32.7 | 30.4 | -2.3 | 21.5 | 19.6 | -1.9 |
| Group VII | 0.1 | 0.1 | 0.0 | 16.2 | 24.5 | 8.3 | 8.1 | 5.4 | -2.7 | 0.9 | 0.4 | -0.5 | 50.7 | 46.8 | -3.9 | 22.4 | 22.8 | 0.4 | 1.7 | 0.1 | -1.6 |
| Group VIII | 5.5 | 2.7 | -2.8 | 15.4 | 20.7 | 20.7 | 4.7 | 2.5 | -2.3 | 8.8 | 7.9 | -0.9 | 25.8 | 22.7 | -3.1 | 30.1 | 37.0 | 6.9 | 9.7 | 6.5 | -3.2 |
| TOTAL | 8.8 | 5.1 | -3.7 | 6.7 | 11.8 | 5.1 | 36.4 | 25.5 | -10.9 | 9.9 | 9.3 | -0.6 | 21.0 | 27.0 | 6.0 | 11.9 | 17.4 | 5.4 | 5.3 | 4.0 | -1.3 |

Source: Data taken from Form EIA-151, a nationwide survey of refiners of motor gasoline.

Note:
Group I: Exxon, Amoco, Shell, Texaco
Group II: Gulf, Mobil, Arco, Chevron
Group III: Sun, Sohio/BP, Union Phillips
Group IV: Marathon, Conoco, Ashland, Citgo
Group V: Getty, Tosco, Champlin, Amerada-Hess
Group VI: Kerr-McGee, Charter, Clark, Coastal States
Group VII: American Petrofina, Tenneco, Crown, Total Petroleum
Group VIII: Diamond Shamrock, Murphy, Farmland, Little America, Vickers, LaGloria, Agway, Energy Coop, Farmer's Union, Tesoro, National Refining, United Refining

Note also: Numbers subject to rounding error.

Table 3

A Profile of Total Branded Stations and Refiner Operated Stations in 26 States of the U.S. -- 15 Major Brands[1]

| State | Total Number of Stations, 15 Major Brands[2] | Total Number of Refiner-Operated Stations[3] | | | Percentage of Branded Stations Which Were Refiner-Operated |
|---|---|---|---|---|---|
| | 1978 | 1977 | 1978 | 1979 | in 1978 |
| Arkansas | 3051 | 28 | 27 | 23 | 0.88* |
| Florida | 7583 | 381 | 404 | 406 | 5.33 |
| Georgia | 6922 | 243 | 241 | 229 | 3.48 |
| Illinois | 5718 | 207* | 196 | 141 | 3.43 |
| Indiana | 4687 | 69** | 70 | 50 | 1.49 |
| Iowa | 2390 | 36 | 35 | 20 | 1.46 |
| Kansas | 1378 | 16 | 22 | 20 | 1.60 |
| Kentucky | 3919 | 100 | 92 | 83 | 2.35 |
| Massachusetts | 4047 | 115 | 101 | 86 | 2.50 |
| Michigan | 5318 | 341 | 294 | 242 | 5.53 |
| Minnesota | 2708 | 114 | 94 | 84 | 3.47 |
| Mississippi | 3714 | 63*** | 57*** | 52 | 1.53 |
| Missouri | 3458 | 42* | 45 | 44 | 1.30 |
| Nebraska | 1250 | 34 | 33 | 10 | 2.64 |
| New Hampshire | 1120 | 12 | 10 | 9 | 0.89 |
| New Jersey | 5140 | 212 | 170 | 151 | 3.31 |
| New York | 9221 | 282 | 198 | 157 | 2.15 |

Table 3 (Continued)

| State | Total Number of Stations, 15 Major Brands[2] | Total Number of Refiner-Operated Stations[3] | | | Percentage of Branded Stations Which Were Refiner-Operated |
|---|---|---|---|---|---|
| | 1978 | 1977 | 1978 | 1979 | in 1978 |
| Ohio | 7016 | 1524 | 1424 | 1377 | 20.30 |
| Oklahoma | 2319 | 75 | 79 | 71 | 3.41 |
| Pennsylvania | 10411 | 569 | 508 | 489 | 4.88 |
| Rhode Island | 667 | 17 | 15 | 11 | 2.25 |
| South Carolina | 4995 | 106 | 93 | 90 | 1.86 |
| South Dakota | 812 | 6 | 3 | 2 | 0.37 |
| Tennessee | 6347 | 267 | 266 | 264 | 4.18 |
| West Virginia | 1961 | 74* | 57 | 61 | 2.91 |
| Wisconsin | 3357 | 125 | 111 | 66 | 3.31 |
| Total Branded Stations in 26 States | 109,519 | 5058 | 4645 | 4238 | % of Total Branded Stations Which Were Refiner-Operated in 1978 -- 4.24% |

[1] Includes primary and secondary brand stations for 15 major refiners as follows: Amoco, Arco, Chevron, Citgo, Conoco, Exxon, Gulf, Mobil, Phillips, Shell, Sohio, Sun, Tenneco, Texaco and Union.

[2] From National Petroleum News Fact Book, Mid-June 1979, plus estimates of the author for Sohio stations.

[3] From API refiners' survey, reported April 21, 1980.

* Number of brands represented is one fewer in 1977 than in 1978 and 1979.

** Not entire count for one brand in 1977.

*** Number of brands represented is one fewer in 1977 and 1973 than in 1979.

## APPENDIX K.—STATEMENT OF HON. HERBERT E. HARRIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Statement of Congressman Herbert E. Harris II
on H.R. 6722
The Small Business Motor Fuel Marketer Preservation Act

It is my understanding that your subcommittee is currently holding hearings on H.R. 6722, the Small Business Motor Fuel Marketer Preservation Act. As you know, I am a cosponsor of this legislation which would address the relationship of the large oil companies and their marketing practices to the viability of small business in the retail gasoline market.

There is growing recognition in Virginia and across the country that we must take immediate action to assure small, independent gasoline dealers a chance to compete under fair terms. Under the current market system, the big oil companies control an independent dealer's gasoline supply, price, the rent of his station, his credit terms and his advertising-- hardly a fair and competitive market! We cannot sit idly by and let big oil companies use their power to force small dealers out of business.

In 1978, Congress made important progress in preserving an independent and competitive gasoline industry when we passed a federal franchise protection law known as the Dealer Day in Court law. This legislation, which I enthusiastically supported, required that an oil company terminating or renewing a franchise had to provide adequate notice to the dealer in question. If a franchised dealer was injured by termination or non-renewal, he could bring the suit to Federal court to recover damages. This legislation was vitally needed to protect franchised dealers who were being run out of business by the large oil companies and greatly improved the dealer's legal standing.

Unfortunately, the oil companies have now devised many other ways to force a dealer out of business. For example, the major oil companies have been using their high profit margins from their own operations to finance reduced operating margins at the retail level. This seriously injures independent dealers who are unable to compete effectively in the face of artificially reduced prices charged by the integrated firms.

If Congress takes action now, it can preserve competition within this small business sector. H.R. 6722 would prohibit the major integrated oil companies from directly operating motor fuel service stations. They could, however, continue to own stations and lease them out to independent dealers to operate. In addition, this legislation would provide the proprietor of any leased station the right of first refusal to purchase that station if it is offered for sale. SBA loan guarantees would be made available for this purpose.

Passage of this legislation would eliminate a patchwork of state regulations and statutes. Several states, including Virginia, have enacted some form of retail divorcement laws and many other states are considering such legislation. More importantly, it would return the marketing of gasoline to the free market.

I commend the Chairman for his efforts in this area. I believe this legislation would achieve the changes necessary to assure the survival and vitality of small, independent marketers of motor fuel.

## APPENDIX L.—STATEMENTS SUBMITTED BY TRADE ASSOCIATIONS RE: H.R. 6722

### EXHIBIT 1: CONNECTICUT GASOLINE RETAILERS ASSOCIATION

ABATE, FOX & FARRELL
ATTORNEYS AT LAW
82 SOUND BEACH AVENUE
OLD GREENWICH, CONNECTICUT 06870
203-637-4566

ERNEST N. ABATE
GERALD M. FOX, JR.
RICHARD W. FARRELL

THOR L. CRONE
MICHAEL J. CACACE

STAMFORD OFFICE
ONE LANDMARK SQUARE
STAMFORD, CT 06901
203-348-7773

April 10, 1980

Congressman Berkley Bedell
U.S. House of Representatives
Committee on Small Business
R-363 Rayburn House Office Building
Washington, D. C. 20515

Dear Congressman Bedell:

At the time of my appearance before your Subcommittee regarding the marketing of gasohol and branded service station locations and the gasoline retail industry generally, you expressed a major interest in impediments placed by the major oil company marketers in the path of gasohol marketing. This letter is in response to that request.

As you are aware, I am counsel to the Connecticut Gasoline Retailers Association, which represents approximately 1,100 service station dealers in the State of Connecticut. As you are also aware, this Association was the first in the nation to implement gasohol sales at branded dealer locations. This program resulted in numerous initial threats, posturing, and credit card withholdings (Exxon) for participating dealers. At the present time, there are in excess of 50 service stations offering gasohol within the State of Connecticut under refiner trademarks. Additionally, this Association has been instrumental in implementing gasohol marketing programs in New York and New Jersey. The "Opinion of Counsel" entered into the record of your Committee, as originally drafted by this office, has become the legal basis for such gasohol marketing. Mr. Wayne Konitshek, President of the Association, who was the primary force in initially implementing gasohol sales within not only Connecticut but New York and New Jersey as well, also testified before your Committee. Mr. Konitshek has been an outspoken critic of the oil companies, their marketing tactics, vertical sales, as well as being President of the state's Association and being on the Executive Committee of the Service Station Dealers of America.

Approximately six months ago, Mr. Konitshek and Exxon (his supplier) entered into negotiations pertaining to the renewal of his service station lease/franchise on May 1, 1980. Exxon's initial "offer" consisted of a rental increase of approximately 90% over a three year period. Thereafter, Exxon's rental proposal "receded" to a mere 66% rental increase over the three year franchise period. In addition to Mr. Konitshek, the only other Exxon gasohol distributor within the state who is presently up for a franchise renewal has suffered the same fate. Exxon's rental demand upon a man by the name of Daniel O'Meara (Darien Service Center) is also approximately 65%.

It has become obvious that Exxon's rental policies regarding these two dealers are in retaliation for the gasohol sales as well as for their past outspoken views regarding not only Exxon but gasoline retailing generally. Additionally, Mr. Konitshek is presently campaigning for Connecticut's Fourth District Seat in the U.S. House of Representatives with a primary plank of his platform being for Divestiture within the oil industry as well as advocating the requirements of H.R. 6722, which arose out of your Committee's hearings. Suit has been filed within the Federal District Court for Connecticut on behalf of both Mr. Konitshek and Mr. O'Meara based upon the exorbitant rental demands of Exxon, which may properly be categorized as retaliation for the past activities of these dealers and their outspoken critism of the industry in general. It has become obvious in the past twelve months that the major oil companies fully intend to utilize the loose wording and advantageous phraseology of the Petroleum Marketing Practices Act to attempt to impose excessive rental increases upon the dealers generally, and, in the case of Mr. O'Meara and Mr. Konitshek, in a clearly retaliatory fashion. Through use of such overt methods, it is apparent that the desire of the companies is to recreate the past climate of "obedience" within the dealer network.

In conclusion, I am forwarding you this correspondence not only in reply to your request that you be informed of gasohol marketing abuses, but by way of a plea to inform your fellow House members and Senate colleagues of the growing number of abuses taking place within the retail gasoline marketplace. Having garnered the knowledge of this industry through your numerous Committee hearings, I have little doubt but that you harbor no pretentions about this industry and the motives of the major oil companies. Any help which you feel appropriate in order to remedy this situation and to prevent future like situations from arising for other dealers would be greatly appreciated.

Very truly yours,

Richard W. Farrell
Attorney
Connecticut Gasoline Retailers Assn.

RWF:dln
cc Congressman Thomas Daschle

## EXHIBIT 2: NATIONAL ASSOCIATION OF MANUFACTURERS

NAM
National Association
of Manufacturers

JAMES P. CARTY
Vice President and Manager
Government Regulation and Competition

June 17, 1980

The Honorable Berkley W. Bedell
Chairman
Subcommittee on Antitrust & Restraint
 of Trade Activities Affecting Small Business
Committee on Small Business
U. S. House of Representatives
Room B363 Rayburn House Office Bldg.
Washington, D. C.   20515

Dear Mr. Chairman:

Find enclosed the National Association of Manufacturers statement in opposition to H.R. 6722, "The Small Business Motor Fuel Marketer Preservation Act of 1980."

The NAM opposes this bill for the reasons stated and request that our statement be made a part of the hearing record. If you or your staff have any questions about our statement, please contact me directly.

Sincerely,

JPC/edr
Enclosures

1776 F Street, N.W.
Washington, D.C. 20006
(202) 626-3700

STATEMENT

OF

THE NATIONAL ASSOCIATION OF MANUFACTURERS

SUBMITTED TO

HOUSE SMALL BUSINESS SUBCOMMITTEE

ON ANTITRUST AND RESTRAINT OF TRADE ACTIVITIES

AFFECTING SMALL BUSINESS

ON

H. R. 6722

SMALL BUSINESS MOTOR FUEL MARKETER PRESERVATION ACT OF 1980

June 17, 1980

The National Association of Manufacturers (NAM) welcomes this opportunity to submit a statement on this important legislative proposal.

NAM is a voluntary business organization of over 12,000 members and has affiliations, through its Associations Department and the National Industrial Council, with an additional 158,000 businesses. In total, NAM members produce approximately 75% of the goods manufactured in this country. Most of our members are small businessmen.

## GENERAL COMMENTS

The NAM is opposed to H.R. 6722 for several reasons. First, the remedy which is proposed in H.R. 6722 is contrary to current legal and economic theory. In fact, the proposal sets a dangerous precedent of interference in the freedom of parties voluntarily to establish and continue contractual relationships. Second, existing antitrust laws are sufficiently broad to deal with any abuse which may exist. The bill would require the largest oil refining companies to divorce themselves of direct control over retail gasoline service station.

Although directed toward the oil industry in particular, the bill seems to be premised on the notion that large, vertically integrated companies in general are bad for the U. S. economy and consumers. An idea NAM is not willing to accept, but for argument sake, even if this premise was true current antitrust laws provide stiff penalties for anticompetitive behavior. In addition, the solution proposed would set an unfortunate precedent of protecting businesses that do not adapt to the dynamics of a highly competitive market and would penalize those companies that are competitive and use fully integrated marketing systems.

The bill would establish rigid rules setting refining and retailing market shares that have no relationship to competition, energy prices, or the availability of gasoline. It tinkers with a problem perceived by some to be at the retail level, but in so doing it portends the possiblity that retail divorcement is a panacea for the problems of any industry, not just the oil industry. By eliminating a legitimate method of achieving substantial efficiencies and economies, H. R. 6722 could add inflationary pressures to a sector of our economy where prices are already rising relentlessly.

Congressman Berkley Bedell (D-IA), the sponsor of H.R. 6722, has testified that refiner-operated outlets are in direct competition with independent dealers whose rent, product supply and price, credit terms and advertising are controlled by the refiner. These dealers have complained of refiner-imposed restrictions on their operations and also of attempts to put them out of business. Congress, in an attempt to assist the small independent dealer, passed the Petroleum Marketing Practices Act of 1978 to deal with lease termination. Now, in an attempt to provide further legislation for the other perceived forms of pressure on independent dealers, Congressman Bedell's bill would eliminate entirely the benefits of refiner-owned outlets.

There are many positive economic and social contributions that result from "vertically integrated" companies that own or control the operation of the chain of production and distribution of a consumer product, from obtaining raw material to selling at the retail level, such as the refiner-owned service station. Vertical integration allows efficiencies and economies by reducing uncertainty and risk, promoting, planning and stream-lining transaction costs. For example, transaction costs are reduced by eliminating the need for price shopping, communicating product specifications, and negotiating contracts. Integration can help an industry respond to rapid changes in the market structure and this is especially important to American business during the present period of increased foreign competition, economic turmoil, and a growing dependence on energy cartels such as OPEC.

Congress has recognized that vertical integration in some cases can result in competitive disadvantages for nonintegrated competitiors. If one company can achieve economies by the integrated system, it can pass the savings on to its customers in the form of lower prices, with the possible result of undercutting the prices of less efficient, nonintegrated competitors. The Sherman, Clayton, and Federal Trade Commission Acts in part were designed to guarantee that companies in a position of power as a result of such economies do not unreasonably restrain or tend to monopolize trade or substantially lessen competition. Section 7 of the Clayton Act prevents corporations from merging to create vertically integrated units which may substantially lessen competition or tend to create a monopoly. The Sherman and Clayton Acts provide ample incentive for injured, nonintegrated competitors to collect treble damages where violations occur. The Federal Government may also use these statutes and the Federal Trade Commission Act to enjoin or penalize violative activities.

The courts have examined vertically integrated businesses under the antitrust laws, particularly Section 7 of the Clayton Act, by balancing the efficiencies and business justification for integration against the possibility of injury to competition. This balancing process is undertaken on a case-by-case basis, since each industry is different and the dynamics of the oil industry in particular are subject to the whims of OPEC.

Other sectors of the economy contain vertically integrated marketing frameworks, with supplier corporations selling both at retail and to competing retailers. The antitrust laws can be effectively used to counter any coercive or anticompetitive practices which might force competing retailers out of business. For example, the Robinson-Patman Act prevents price discrimination between different purchasers of similar commodities, and a sale to a refiner's subsidiary for less than one to a refiner's independent retailer might be a violation. This is discussed in more detail below.

The existence of the antitrust laws not only discourages anti-competitive practices, but also provides substantial incentive for antitrust actions for treble damages where competitors are injured. Competitors in other industries with similar marketing structures have been able to live with these laws, and the NAM sees no justification for singling out the gasoline retailer, as is provided for in this bill, for special treatment.

## PRICE DISCRIMINATION

Section 3(c)(1) of the bill makes it unlawful for any refiner "to sell motor fuel at any time at any point of transfer at different prices for any basic unit of motor fuel, except that nothing in this paragraph shall be construed to prevent differentials in prices of motor fuel which make only due allowance for differences in the cost of manufacture, sale, or delivery of such motor fuel resulting from the differing methods or quantities in which such motor fuel is sold or delivered." However, Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act, already makes it unlawful for "any person engaged in commmerce . . . to discriminate in price between different purchasers of commodities of like grade and quality . . . where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers or either of them . . ." This Act allows differentials based on differences in the costs to manufacture, sell, or delivering the goods to different customers. The proposed bill is similar to the Robinson-Patman Act, except for these major differences: (1)it requires no showing of injury to competition; (2) it seemingly applies to sales of motor fuel for use, consumption, or resale outside as well as within the United States, regardless of whether there is any anticompetitive impact in the United States or affecting American competitors, and (3) it can be construed to eliminate the defense of "meeting competition," i,e., using a lower than usual price in good faith to meet an equally low price of a competitor.

If price discrimination in the sale of motor fuel is perceived as a threat to the viability of independent retailers, the Robinson-Patman Act already provides a remedy. If the reason for Section 3(c)(1) is to eliminate the need to show injury, it unfairly discriminates against major refiners for thier own corporate pricing decisions without placing similar restrictions on smaller refiners. If retail competitors are unable to prove injury from price discrimination, the justification for this provision loses much force. In addition, there is no reason to apply the proposed bill to sales of motor fuel for use outside the United States, nor should the defense of meeting competition be eliminated with respect to this highly competitive industry in light of the fact that all other industries have the defense under the Robinson-Patman Act.

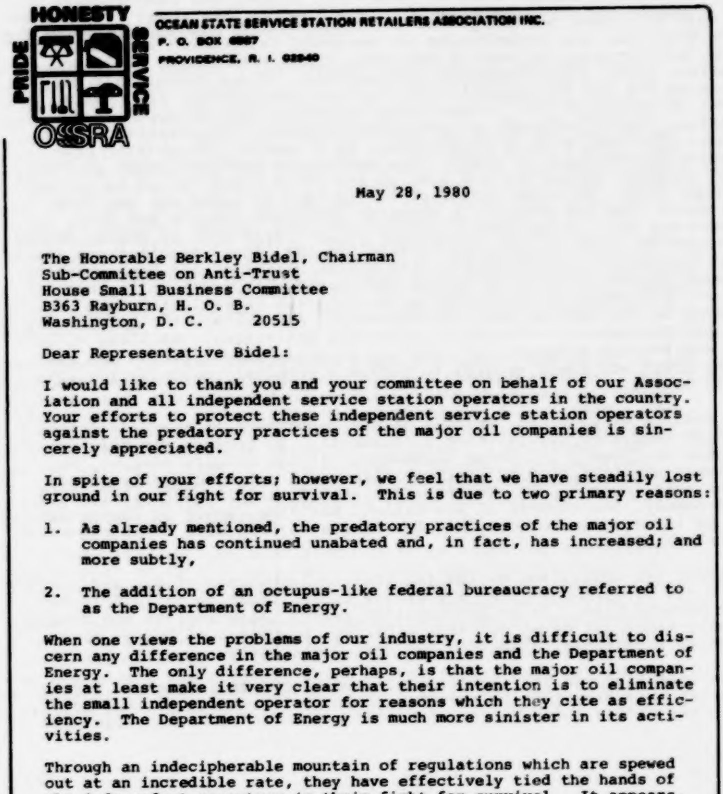
## RESTRAINT OF TRADE

Section 3(d)(1) of the bill makes it unlawful for any person to "restrain, interfere with, or in any way prevent the purchasing from another, the storing, or the selling of motor fuel by any dealer." Section 1 of the Sherman Act already prohibits contracts, combinations, or conspiracies among two or more parties in restraint of trade, and violations are subject to treble awards, criminal penalties, and injunctions. If the purpose of the bill is to apply to actions by individuals, whether or not they are acting in conjunction with others, we do not disagree with the sentiment but we submit that remedies are already available for interference with a business under state and common law.

## CONCLUSION

H. R. 6722 is an attempt by some motor fuel retailers to alleviate the economic squeeze many of them feel from inflation, tight credit, high fuel prices, and stiff competition. Nevertheless, we believe that free market principles are fundamental to assure that the public will obtain the maximum benefits from our economic system. The interests of the public are best served when arrangements, not in restraint of trade but within the legitimate activities of a free market, are free from government regulation or restriction. H. R. 6722 introduces a drastic aberration from these principles, and threatens to disrupt an already volatile segment of our economy. It proposes a dangerous precedent for industry, not just for motor fuel distribution, and we recommend that it not be adopted.

## EXHIBIT 3: OCEAN STATE SERVICE STATION RETAILERS ASSOCIATION, INC.



HONESTY
PRIDE
SERVICE
OSSRA

OCEAN STATE SERVICE STATION RETAILERS ASSOCIATION INC.
P. O. BOX 6867
PROVIDENCE, R. I. 02940

May 28, 1980

The Honorable Berkley Bidel, Chairman
Sub-Committee on Anti-Trust
House Small Business Committee
B363 Rayburn, H. O. B.
Washington, D. C. 20515

Dear Representative Bidel:

I would like to thank you and your committee on behalf of our Association and all independent service station operators in the country. Your efforts to protect these independent service station operators against the predatory practices of the major oil companies is sincerely appreciated.

In spite of your efforts; however, we feel that we have steadily lost ground in our fight for survival. This is due to two primary reasons:

1. As already mentioned, the predatory practices of the major oil companies has continued unabated and, in fact, has increased; and more subtly,

2. The addition of an octupus-like federal bureaucracy referred to as the Department of Energy.

When one views the problems of our industry, it is difficult to discern any difference in the major oil companies and the Department of Energy. The only difference, perhaps, is that the major oil companies at least make it very clear that their intention is to eliminate the small independent operator for reasons which they cite as efficiency. The Department of Energy is much more sinister in its activities.

Through an indecipherable mountain of regulations which are spewed out at an incredible rate, they have effectively tied the hands of the independent operators in their fight for survival. It appears, at this point, that the only justification for the continued existance of the Department of Energy, aside from its defacto accomplishments of enhancing the major oil companies' position in the marketplace, is to preserve itself, grow larger and larger, obtain greater and greater increases in its operating budget, hire more personnel, purchase more office equipment, purchase more office space, and provide printers and paper suppliers with an inexhaustable demand.

I wish to relate one example of the Department of Energy's propensity for over-kill and intimidation of the small independent operator. The case in point is that of Max Fine, d/b/a Park Avenue Shell and Jeffrey Fine, d/b/a Reservoir Avenue Shell. These individuals are related but run two separate and distinct businesses. It appears that in August of 1979 a Department of Energy auditor appeared at Jeffrey Fine's business and conducted an audit. The result of this audit disclosed a $4.50 overcharge. As a result, the auditor proceeded to negotiate a "FINE". The auditor in question began at $500 and steadily worked his way down to the point where he had agreed to accept $200. Mr. Fine indicated to him that he would not pay $200, at which time the auditor in question indicated that he was going to leave and that if the Boston office of the Department of Energy should contact Mr. Fine, he was not to disclose the "fine" negotiations which had transpired. Subsequently, the Boston office of the Department of Energy contacted Mr. Fine and he made certain facts known to that office. Following the disclosures, an in-house investigation was conducted on the auditor and, on information and belief, the auditor was either discharged or transferred for his activities. Needless to say, we are totally dissatisfied with the in-house investigation and feel that there are ample grounds to pursue a criminal investigation into this matter.

In January of 1980, Mr. Weltman of the Department of Energy's Boston office requested Jeffrey Fine's documents. No request was made from August to January for these documents. At the January meeting, Mr. Weltman was told that Mr. Jeffrey Fine would not voluntarily comply with this request. Mr. Weltman then stated that if Jeffrey Fine did not comply, the records of his father, Max Fine, would be subpoenaed. It is interesting to note that Max Fine's records were never requested until this day.

I trust you understand my feeling that the subpoenas of Max and Jeffrey Fine are nothing more than a coercive tactic meant to intimidate Max and Jeffrey Fine. It is difficult to relate these stories and remain civil, since all of my dealings with the Department of Energy have left me frustrated, disgusted and very, very angry.

Your intention and the intention of some of our colleagues to try to rectify this situation is somewhat consoling; however, at this point, with the battle going on for approximately seven years and reams and reams of reports being filed with your committees and hearing after hearing being conducted, nothing has changed. I am extremely cynical and believe that the federal government is much too unresponsive to the public's needs and, quite frankly, there simply are not enough people in government who give a damn.

The Department of Energy's regulations limiting the maximum profit margin of the retail dealer to 16.1 cents per gallon in and of itself is inequitable and insufficient to allow a reasonable return on investment. The reality of the price control is that the dealers are not allowed 16.1 cents per gallon since the major oil companies, who are suppliers and landlords, have so increased their rental over the past five years, the net result of which leaves the retail operator with a choice of remaining in business with a very small profit margin or simply going out of business. I am enclosing herewith a schedule of randomly sampled service station operators and their rentals for the past five years, where available. As you will note, Arco appears, at least in this sample, to be the greatest violator in its rental increases which are nothing more than attempts to force certain dealers out of business. The Department of Energy has moved with the speed of a dinosaur suffering from paralysis attempting to escape quicksand.

I fear that by the time substantive steps are taken, the ranks of the independent service station operator will be further reduced. Here in Rhode Island, the independent operators have decreased in number from approximately 1,200 in 1973 to approximately 700 in 1980. For those 500 dealers, no amount of legislation or regulation can bring them back into the gasoline marketing business. I am afraid that under the current system of regulations, hearings, sub-committees etc., etc., more dealers will be forced out of the business leaving the major oil companies the dominating factor in the retail distribution of petroleum products.

I would also like to take this opportunity to voice our Association's strong support of HR-6722 but again believe that the financial resources of the major oil companies and their lobbyists control Capital Hill to such an extent that the bill is doomed to languish in purgatory until it is so watered-down as to render it ineffective. In a word, we believe that too many of your colleagues are bought and paid for, directly or indirectly, by the major oil companies. We can appreciate the pressure which an individual such as yourself must be under in your attempts to do what is in the best interest of the country and can only offer our heartfelt gratitude and esteem.

I will be happy to appear in person before your committee or any other committee which is sincerely attempting to resolve the problems that exist.

Thank you for your attention to this rather lengthy diatribe.

Very truly yours,

OCEAN STATE SERVICE STATION
RETAILER'S ASSOCIATION

Arnold N. Montaquila
Legal Counsel

ANM/nd
Enclosure
cc: Congressman Edward P. Beard
Senator Claiborne Pell
Congressman Fernand J. St. Germain
Ms. Hazel Rollins

| | | | ANNUAL RENTAL | | | | | |
|---|---|---|---|---|---|---|---|---|
| NAME | COMPANY AFFILIATION | LOCATION | 1975 | 1976 | 1977 | 1978 | 1979 | 1980 |
| Laorenza, William | Arco | Providence | $ | $ | $ | $ | $ 7,620. | $ |
| Lord, Bud | Arco | E. Greenwich | 7,800. | 7,800. | 7,800. | 11,592. | 11,592. | 42,000. |
| Urso, John P. | Arco | Westerly | 6,600. | 6,600. | 9,600. | 9,600. | 9,600. | 19,200. |
| Wayne, Lawrence | Arco | Pawtucket | 3,874. | 3,624. | 3,624. | 3,665. | 4,116. | 7,372. |
| DeCesare, William | Exxon | E. Greenwich | 4,655. | 5,738. | 5,757. | 7,521. | 8,060. | 8,964. |
| Grasso, Richard | Gulf | Providence | 10,800. | 11,300. | 11,300. | 13,020. | 13,650. | 16,800. |
| Prata, Alan | Gulf | E. Providence | 2,700. | 2,700. | 3,840.+ | 7,200. | 8,820. | 9,000. |
| Chevalier, Ben | Mobil | W. Greenwich | .0135/gal | .0135/gal | .0135/gal | .0135/gal | .023/gal | .023/gal |
| Dunn, Donald | Mobil | Westerly | 14,303. | 15,145. | 17,888. | 17,310. | 20,363. | |
| Pare, Charles | Mobil | Providence | 7,200. | 7,200. | 8,400. | 10,200. | 12,000 | 16,800. |
| Gaglio, Nicholas | Shell | Bristol | 7,800. | 9,000. | 10,200. | 10,200. | 10,200. | 12,300. |
| Marsh, Michael | Shell | Cranston | | | 6,000. | 9,000. | 10,200. | 13,200. |
| Pesce, David | Shell | N. Providence | 7,800. | 7,800. | 7,800. | 11,760. | 12,960. | 12,960. |
| Mello, Christopher | Sunoco | Pawtucket | 5,340. | 10,500. | 10,500. | 11,700. | 12,300. | 13,200. |
| Kushner, Alan | Texaco | Warwick | | | | 7,584. | 13,776. | 16,176. |
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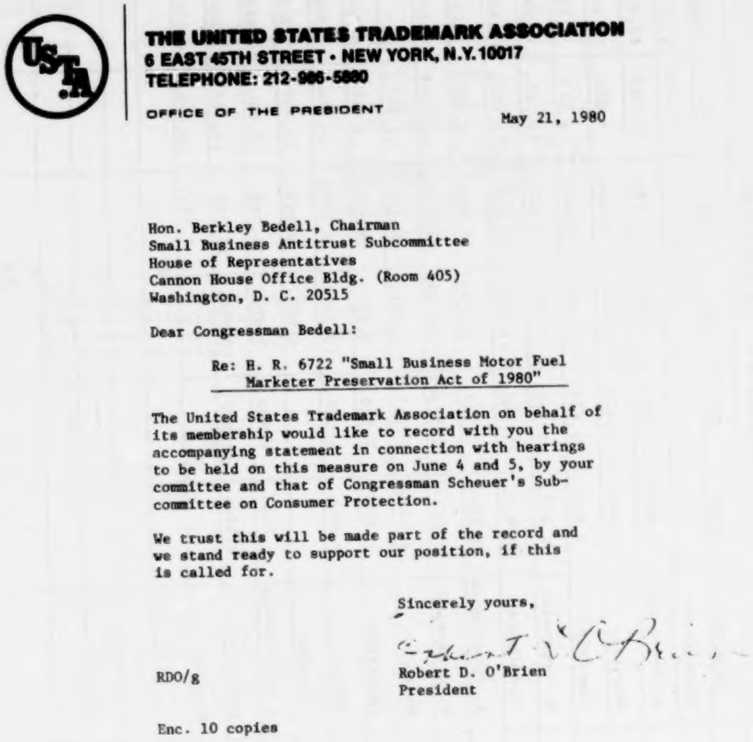
## Exhibit 4: The United States Trademark Association



**THE UNITED STATES TRADEMARK ASSOCIATION**
**6 EAST 45TH STREET • NEW YORK, N.Y. 10017**
**TELEPHONE: 212-986-5880**

OFFICE OF THE PRESIDENT

May 21, 1980

Hon. Berkley Bedell, Chairman
Small Business Antitrust Subcommittee
House of Representatives
Cannon House Office Bldg. (Room 405)
Washington, D. C. 20515

Dear Congressman Bedell:

Re: H. R. 6722 "Small Business Motor Fuel Marketer Preservation Act of 1980"

The United States Trademark Association on behalf of its membership would like to record with you the accompanying statement in connection with hearings to be held on this measure on June 4 and 5, by your committee and that of Congressman Scheuer's Subcommittee on Consumer Protection.

We trust this will be made part of the record and we stand ready to support our position, if this is called for.

Sincerely yours,

Robert D. O'Brien
President

RDO/g

Enc. 10 copies

## UNITED STATES TRADEMARK ASSOCIATION

### Comments on H.R. 6722

### Small Business Motor Fuel Marketer Preservation Act of 1980

The United States Trademark Association (USTA) is a not-for-profit membership corporation the purposes of which are to protect the interests of the public in the use of trademarks, to protect the rights of trademarks owners, and to educate the business community, educators, the press and public as to the function, importance, and proper use of trademarks.

The Association represents nearly 1,500 corporations, law firms, and other organizations concerned with the protection of trademarks world-wide. Its members include the majority of the Fortune 500 companies, as well as many small companies in all fields of business activity. We believe that the USTA is the oldest and largest organization in the world dedicated totally to activities in the trademark field.

The Association has reviewed the provisions of H.R. 6722 and believes that certain of its provisions will have a significant and adverse impact upon trademark owners and others involved in the protection of trademark rights. For that reason, we oppose passage of the bill in its present form.

The provisions of H.R. 6722 which are of most concern to USTA are the following:

3(c)(2) "Nothing ... shall ... prevent a refiner from charging any person a uniform and reasonable surcharge ... as consideration for the use ... of a trademark ...."

3(d)(1) "... it shall be unlawful for any person to restrain, interfere with, or in any way prevent the purchasing from another, the storing, or the selling of motor fuel by any dealer."

3(d)(2) "... it shall be unlawful for any dealer ... to sell motor fuel which is not refined by such refiner without providing reasonable notice at the point of sale to purchasers of such motor fuel that such motor fuel is not provided by such refiner."

Before commenting specifically on these sections, an introductory statement about trademarks that relates to our general concerns about H.R. 6722 may be helpful. Trademarks, or service marks, are marketing symbols that differentiate the goods or services provided by one supplier from similar goods or services supplied by some other source. Such marks are valuable marketing tools of their owners. More important, they give to the public a means whereby it can identify particular goods or services and recognize them as those which have satisfied them in the past. The trademark or service mark serves as a guarantee to the public that the goods or services on which they appear will be of the same kind and quality as those previously purchased under the mark. Should the quality in fact not be satisfactory, the trademark or service mark provides a ready means of assuring accountability. In thus protecting the consumer and maintaining meaningful competition, the trademark system serves the public interest. To relate these concepts more specifically to H.R. 6722, we have a situation wherein refiners own valuable service marks and trademarks. These marks are the means whereby the public identifies the products or services for which the respective refiners are responsible. The marks are the public's guarantee of continued quality and the means whereby the public can assess accountability. To the extent that this function of a trademark or service mark is eroded, both the owner and the public are injured.

Section 3(c)(2) provides that a refiner may charge a "uniform and reasonable surcharge" to a dealer as consideration for that dealer's use of the refiner's trademark. USTA has the following concerns about this provision:

1. We believe that it would be an unfortunate precedent to give the Federal Trade Commission any authority to determine whether a surcharge is in fact "reasonable".

2. There is no requirement that a dealer use a refiner's trademark on goods procured from the refiner. The provisions of this section, particularly when read in context with other provisions of the bill,

suggest that a dealer would have the right to demand that a refiner supply the product to him without assessing any surcharge if the dealer chooses to sell that product without the refiner's trademark, for example from a pump not bearing the refiner's mark. Such an interpretation would destroy the right of the trademark owner to have his product marketed under its trademark, thereby depriving it of a valuable marketing tool and also depriving the public of the benefits arising from the use of trademarks.

3. The section could also be interpreted to absolve the dealer of any obligation to pay a surcharge to the refiner-trademark owner, but still use its mark, if the dealer buys the refiner's product from a source other than the refiner. The inequity of this seems evident.

Section 3(d)(1) permits a dealer to sell products from sources other than the refiner-trademark owner. The Association believes that, with certain safeguards, the sale of branded and non-branded products at the same station may be consistent with generally accepted trademark principles. However, we believe that to legislate this type of conduct is unwise, as it creates a dangerous potential for confusion and palming off. To refer again to basic principles of trademark law, should the trademark be associated with a non-branded product not emanating from the trademark owner, the public is deceived as to what it is purchasing and the trademark owner becomes subject to the consequences arising from the fact that the trademark in the public mind stands as a guarantee of quality from the trademark owner, although in this case the product emanates from another source.

We believe that, at least in today's market environment, many (and probably most) customers drive into a gasoline station because of brand recognition of the mark displayed at the station entrance. Many times, the customer possesses a credit card issued by the refiner whose mark is so displayed. Once the customer has driven into the station, he or she is not likely to perceive that the fuel being sold (even assuming it is dispensed through a separate pump which is clearly marked) does not come from, or is not at least sponsored by, that refiner. Should the customer come to appreciate that difference after turning into the station, he or she is not then likely to leave the station. Assuming the customer perceives the difference and specifically requests the branded product, there is no assurance that it will be available. Nothing in the legislation requires the dealer to retain a sufficient supply of branded fuel to satisfy such customer requests. And even if the fuel dispensed is not that of the refiner, the refiner may be obligated, at least for goodwill reasons, to accept the refiner's credit card. The possibility of confusion seems inescapable.

USTA also believes that Section 3(d)(1) could severely hamper the trademark owner in his effort to achieve proper quality control. In particular, this provision may give the dealer carte blanche to comingle branded gasoline with alcohol or other products, and to sell such comingled product through the branded pump. There are other similar concerns, e.g., whether the trademark owner could interfere with the sale of contaminated gasoline (for example, unleaded fuel which has been stored in a tank previously used for leaded fuel), or whether the trademark owner could take action against a dealer whose tanks are leaking into the city water supply. This raises the questions as to the exposure of the trademark owner to product liability claims made on non-branded or other-branded products sold at the station bearing the owner's mark. The bill is silent on this issue.

It is the apparent intention of Section 3(d)(2) to alleviate the aforesaid problems by providing that a dealer give "reasonable notice" that motor fuel from another source does not emanate from the refiner-trademark owner. While USTA generally favors a requirement that notice be required, we do not believe that the provision, in its present form, resolves the problem.

1. The Section is vague. A key question, of course, is what constitutes "reasonable notice". What is or is not reasonable would obviously depend on the facts in each particular case, and thus raises the question of whether this is an appropriate area in which to legislate.

2. Once again, USTA questions the advisability of giving the Federal Trade Commission authority to interpret what is or is not reasonable.

3. The language of this section as written would not appear to require any notice in those cases where the motor fuel is refined by an independent contractor for a refiner, since such fuel is not "refined by such refiner".

For the foregoing reasons, The United States Trademark Association believes that legislating this type of conduct, and giving to the Federal Trade Commission the power to interpret whether various aspects of the conduct are reasonable, raises significant problems. Specific provisions have an adverse effect directly on the integrity of the trademark system. Thus, the Association respectfully opposes H.R.6722 in its present form.

## Exhibit 5: The West Virginia Service Station Dealers' Association

**West Virginia Service Station Dealers' Association**
(formerly West Virginia Gasoline Dealers Association)
Affiliated with Service Station Dealers of America
(formerly National Congress of Petroleum Retailers)
617 SIXTH AVENUE • HUNTINGTON, W. VA. 25701
OFFICE (304) 697-5850 • W.VA. 1-(800) 642-3555

WILLIAM BELL, President
3106 Summer Avenue
Huntington, W.Va. 25705
(304) 523-2461

MARVIN Z. GRAY, Executive Director
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Huntington, W.Va. 25701
(304) 697-5850

RONALD E. ANDERSON, General Counsel
745 Fifth Avenue
Huntington, W.Va. 25701
(304) 523-7413

May 28, 1980

The Honorable Berkley Bedell
Chairman Sub-Committee on Anti-Trust
and Restraint of Trade Activities
Affecting Small Business
B-363 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman,

This statement is in support of HR 6722, HR 6849 and HR 7034.

The West Virginia Service Station Dealers' Association represents gasoline dealers in all 55 counties in West Virginia; some of them strictly full service, some of them strictly self service. A large majority of them have split islands offering both full serve and self serve gasoline, but also providing preventive maintenance, minor mechanical repairs and road service.

The oil companies contend that the sole purpose of Divorcement legislation is to destroy competition for some gasoline dealers from the high-volume, low-margin company operated discount stations. We are not asking that Congress guarantee a profit for us or to penalize efficiency. We cannot understand how oil companies find it possible to retail gasoline in lots of 5 to 25 gallons at the same price and in some cases a lower price as charged for deliveries of 8,000 and 9,000 gallons in one delivery. I would be tempted to call it impossible, but it is happening. As is the case of (Exhibit A) on May 1, 1980 Ashland Oil's Save Mart station on 8th Street and 9th Avenue in Huntington was selling gasoline one cent per gallon more than the dealer tankwagon (wholesale) including rent, price to Emmett Jones, a dealer located approximately one mile away.

(Exhibit B) on April 15, 1978 Ashland Oil's Save Mart station on Route 60 East in Huntington was selling gasoline 1.2 cents per gallon less than the dealer tankwagon (wholesale) price to Bowen's Ashland, a dealer located approximately one-quarter of a mile away.

(Exhibit C) on November 1, 1978 the Ashland Oil Save Mart station located on 8th Street and 9th Avenue in Huntington was retailing regular for 60.9 cents per gallon, while at the same time they were selling it dealer tankwagon (wholesale) to Jones' Ashland at 16th Street and Washington Boulevard in Huntington at 60.5 cents per gallon, which is 4/10 of a cent difference, plus Mr. Jones has a rent of 1.5 cents per gallon. Taking the rent into consideration, the company would be selling 1.1 cents below Mr. Jones' cost of the product including rent.

We are not asking the oil companies to raise their retail prices. We would prefer that they make available to their wholesale dealers at a commensurate price some of the same gasoline. As you will note on Exhibit D, on July 10, 1978 Gulf Oil was selling their gasoline to its retail dealers at a price of 44.7 cents per gallon excluding taxes, while at the same time Gulf Oil Company put its annual bid in for gasoline to the Kanawha County School Board at 37.77 cents per gallon, which is 6.9 cents per gallon less than the wholesale price to its dealers. Yet, even at these reduced prices they maintain a handsome profit. If they can sell gasoline to cities and counties this much less, why can't they wholesale gasoline to their dealers at a much lower dealer tankwagon price?

The oil companies contend that Divorcement will cause petroleum prices to escalate. Gasoline prices have increased approximately 300% in the last seven years without Divorcement.

In a statement made by the Division Manager of Boron Oil Company before the West Virginia Senate Judiciary Committee hearing on Senate bill 422 February 20, 1975, he indicated that "the most obvious and important benefit is that lower gasoline prices prevail at company operated gasoline stations." Then in his own handwriting on his statement,"during normal times." If you will remember back during the long lines, during the embargo of 1973 and 1974 and in 1979, many of the so-called lower gasoline prices at the company operated stations were higher than the prices at dealer operated stations and according to the West Virginia State Tax Department,(Exhibit E) this information indicates the company owned stations insured themselves they had plenty of product during the embargo of 1973 and 1974 when dealers were on a strict allocation and as indicated by the report, dealers got less in most all cases during the embargo; in one case as much as 100,000 gallons less during the year's period while the company operated stations in most all cases received considerably more. As indicated in #3, of Exhibit E, a company owned station received over 300,000 gallons more in 1974 than in 1972 to move them over one million gallons. When, in reality, had the company been allocating themselves as they were supposed to, they should have only sold approximatley 700,000 gallons. That extra amount the companies allocated themselves should have been spread out equally between all their outlets throughout the state, region and nation making more available overall and especially to some of the areas that were completely out of gasoline. Numer 5 of Exhibit E, is another good example. A company operated station should have received and sold less than 500,000 gallons but instead they sold over 800,000 gallons which again is over a 300,000 gallon increase. These figures, compiled by the West Virginia State Tax Department, clearly indicate that when the supply is tight the oil companies manipulate themselves a significant share of the market at the expense of dealers.

Exhibit F is a copy of a letter from a concerned consumer concerning a company operated Gulf station in Kanawha County opening up four blocks from a Gulf dealer operated station.

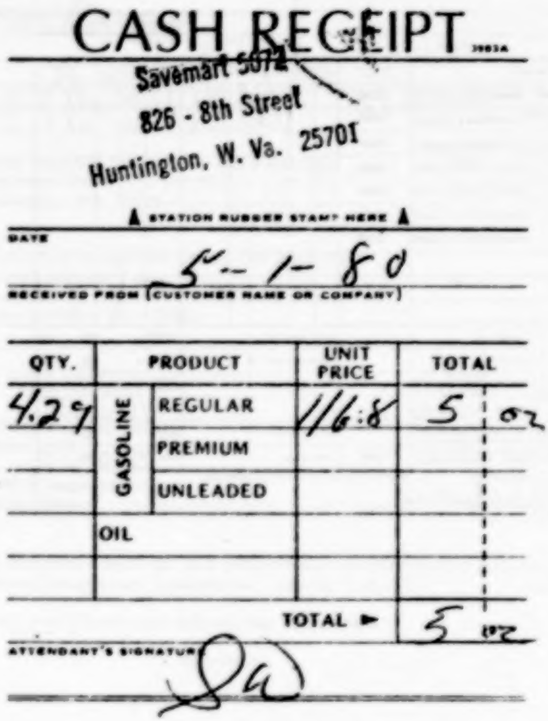
WVSSDA appreciates your concern and efforts on behalf of small business. With dedicated congressmen like yourself, relief is just a short period away.

Sincerely,

Marvin Z. Gray
Marvin Z. Gray
Executive Director

MZG:bjl

EXHIBIT "A"



CASH RECEIPT

Savemart 5072
826 - 8th Street
Huntington, W. Va. 25701

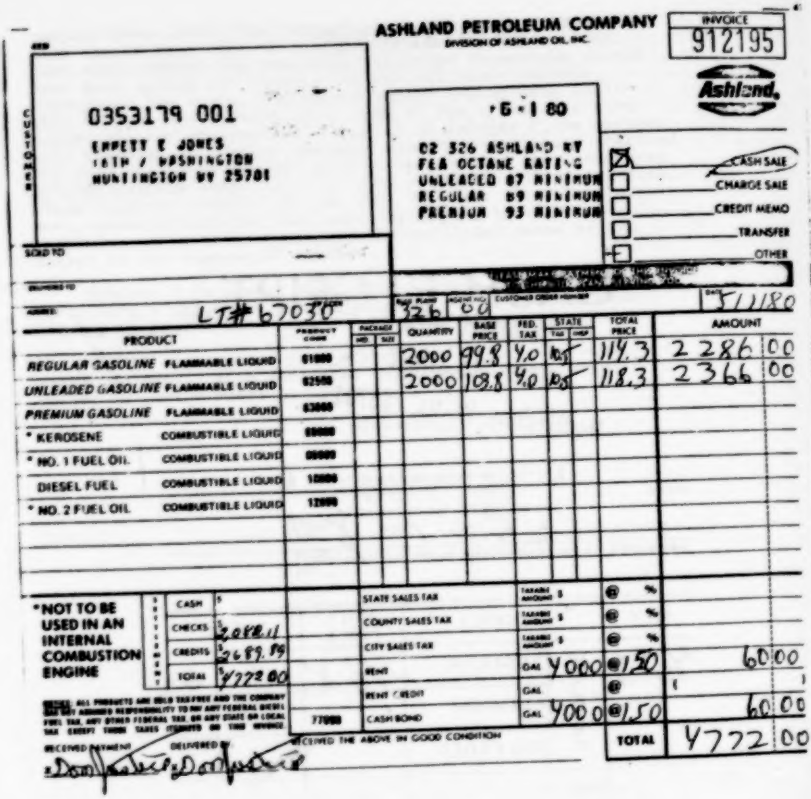
▲ STATION RUBBER STAMP HERE ▲

DATE 5-1-80

RECEIVED FROM (CUSTOMER NAME OR COMPANY)

| QTY. | PRODUCT | | UNIT PRICE | TOTAL | |
|---|---|---|---|---|---|
| 4.29 | GASOLINE | REGULAR | 116:8 | 5 | 02 |
| | | PREMIUM | | | |
| | | UNLEADED | | | |
| | OIL | | | | |
| | | | | | |
| | | | TOTAL ► | 5 | 02 |

ATTENDANT'S SIGNATURE



**ASHLAND PETROLEUM COMPANY**
DIVISION OF ASHLAND OIL, INC.

INVOICE
912195

Ashland.

CUSTOMER
0353179 001
EMMETT E JONES
16TH / WASHINGTON
HUNTINGTON WV 25701

·6·1 80

02 326 ASHLAND KY
FEA OCTANE RATING
UNLEADED 87 MINIMUM
REGULAR 89 MINIMUM
PREMIUM 93 MINIMUM

☒ CASH SALE
☐ CHARGE SALE
☐ CREDIT MEMO
☐ TRANSFER
☐ OTHER

[illegible]

SOLD TO
DELIVERED TO
ADDRESS LT#67030

| | | | | | |
|---|---|---|---|---|---|
| SALES PLANT 326 | AGENT NO. 00 | CUSTOMER ORDER NUMBER | | DATE 511180 | |

| PRODUCT | PRODUCT CODE | PACKAGE NO. | PACKAGE SIZE | QUANTITY | BASE PRICE | FED. TAX | STATE TAX | STATE INSP. | TOTAL PRICE | AMOUNT | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| REGULAR GASOLINE FLAMMABLE LIQUID | 01000 | | | 2000 | 99.8 | 4.0 | 10.5 | | 114.3 | 2286 | 00 |
| UNLEADED GASOLINE FLAMMABLE LIQUID | 02500 | | | 2000 | 103.8 | 4.0 | 10.5 | | 118.3 | 2366 | 00 |
| PREMIUM GASOLINE FLAMMABLE LIQUID | 03000 | | | | | | | | | | |
| * KEROSENE COMBUSTIBLE LIQUID | 05000 | | | | | | | | | | |
| * NO. 1 FUEL OIL COMBUSTIBLE LIQUID | 06000 | | | | | | | | | | |
| DIESEL FUEL COMBUSTIBLE LIQUID | 10000 | | | | | | | | | | |
| * NO. 2 FUEL OIL COMBUSTIBLE LIQUID | 12000 | | | | | | | | | | |

***NOT TO BE USED IN AN INTERNAL COMBUSTION ENGINE**

| SETTLEMENT | |
|---|---|
| CASH | $ |
| CHECKS | $2082.11 |
| CREDITS | $2689.89 |
| TOTAL | $4772.00 |

| | | | | | |
|---|---|---|---|---|---|
| | STATE SALES TAX | TAXABLE AMOUNT $ | @ % | | |
| | COUNTY SALES TAX | TAXABLE AMOUNT $ | @ % | | |
| | CITY SALES TAX | TAXABLE AMOUNT $ | @ % | | |
| | RENT | GAL 4000 | @1.50 | 60 | 00 |
| | RENT CREDIT | GAL | @ | ( | ) |
| 77000 | CASH BOND | GAL 4000 | @1.50 | 60 | 00 |
| | | | TOTAL | 4772 | 00 |

[illegible] ALL PRODUCTS ARE SOLD TAX-FREE AND THE COMPANY [illegible] ASSUMES RESPONSIBILITY TO PAY ANY FEDERAL DIESEL FUEL TAX, ANY OTHER FEDERAL TAX, OR ANY STATE OR LOCAL TAX EXCEPT THOSE TAXES ITEMIZED ON THIS INVOICE

RECEIVED PAYMENT x Don Foster
DELIVERED BY x Don Foster
RECEIVED THE ABOVE IN GOOD CONDITION

EXHIBIT "B"

**September 28, 1978**

**Mr. Jerry Ferrara, Co-Chairman**
**Mr. Jack Houston, Co-Chairman**
**Committee on State & National Legislation**
**N.C.P.R.**
**[illegible]0[illegible]1 K Street, N.W.**
**Washington, D.C. 20006**

**Gentlemen:**

**At your request for information for the Department of Energy hearing on October 6 on unfair competition by direct suppliers – the following information is provided:**

| | April 15<br>1978 | Sept. 22<br>1978 |
|---|---|---|
| **1 – Actual Supplier Retail Price (No Sales Tax)<br>Save Mart, 5702 U.S. Rt. 60 E.<br>Huntington, WV 25705** | **53.9¢** | **61.9¢** |
| **2 – Actual DTW of Ashland Dealer (No Sales Tax)<br>Approximately 1/4 mile away<br>Bowen's Ashland, 5750 Davis Creek Road<br>Barboursville, WV 25504** | **55.1¢** | **60.5¢** |
| **Less (1) Above** | **53.9** | |
| **Less (2) Above** | | **60.5** |
| **Amount Supplier Selling Below DTW** | **1.2¢** | |
| **Amount Supplier Selling Above DTW** | | **1.4¢** |

**Affidavit enclosed – April 15, 1978 prices were recorded on that date for West Virginia Jobbers/Distributors Association. Use for N.O.J.C.**

**Sorry that I don't have more information at this time.**

**Sincerely,**

**Encl.**

**Marvin Z. Gray,**
**Executive Director**

# AFFIDAVIT

STATE OF WEST VIRGINIA,
COUNTY OF CABELL, TO-WIT:

Before me, the undersigned authority, a Notary Public in and for the County and State aforesaid, this day personally appeared Asa Bowen who, being by me first duly sworn, deposes and says that:

1. At all times mentioned and referred to herein, he has been and is a gasoline dealer who is engaged in the retail sale of petroleum products under a franchise agreement with the Ashland Oil Company, producer, refiner and manufacturer of motor fuel or other petroleum products for sale, and your Affiant is doing business as Bowen's Ashland located at 5750 Davis Creek Road, Barboursville, West Virginia 25504;

2. He is informed and believes, and states upon such information and belief, that the Ashland Oil Company, by and through their agents and employees, are engaged in the retail sale of petroleum products at a retail outlet known as Save Mart located at 5702 U. S. Route 60 East, Huntington, West Virginia 25705, and that such location is approximately one-fourth of one mile from your Affiant's retail outlet aforementioned;

3. On April 15, 1978, your Affiant's dealer tank wagon price for regular grade gasoline was 55.1 cents per gallon and your Affiant, on the same day, observed personally that the posted retail price at the aforementioned Save Mart retail outlet

was 53.9 cents per gallon for regular grade gasoline;

4. On September 22, 1978, your Affiant's dealer tank wagon price for regular gasoline was 60.5 cents per gallon and your Affiant, on that date, personally observed the posted retail price of regular gasoline at the aforementioned Save Mart retail outlet was 61.9 cents per gallon.

Asa H Bowen.
ASA BOWEN

Taken, subscribed and sworn to before me, the undersigned authority, this 9/27 day of September, 1978.

My commission expires [illegible] - 10 - [illegible].

NOTARY PUBLIC

EXHIBIT "C"

December 6, 1978

Mr. Charles Binsted,
Executive Director
NCPR
2021 K Street, N.W.
Washington, D.C. 20006

Dear Charlie:

Enclosed is information requested previously by Jack Houston and Jerry Farrar in regards to Title III, HR-130.

1. 11-1-78
   Save-Mart, Secondary brand of Ashland Oil
   8th St. 9th Avenue
   Huntington, W. Va

   Retail Price 60.9¢ per gal.

2. 10-30-78
   Actual DTW of Jones Ashland,
   Ashland Oil brand dealer
   16th St. Washington Blvd.
   Huntington, W.VVa.

   Retail Price 60.5¢ per gal.

   Amount suppliers selling above retail .4¢ per gal.

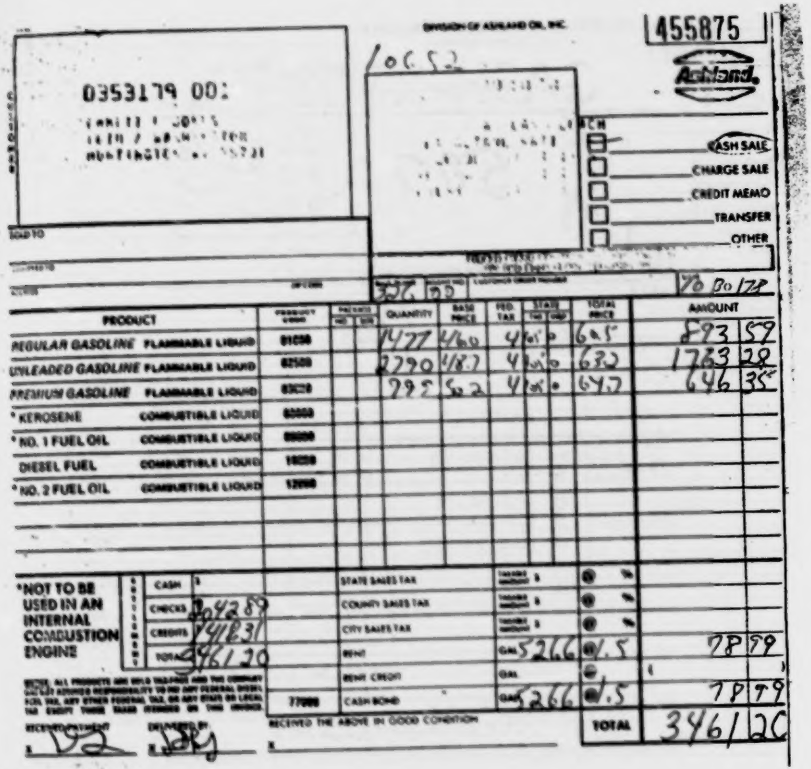
Also as indicated on the invoice from Ashland to Mr. Jones. Mr. Jones is paying 1.5¢ per gallon rent.

I hope this information is helpful in our continued effort to prove subsidization by the oil companies.

Sincerely,

Marvin Z. Gray,
Executive Director

MZG:jr



DIVISION OF ASHLAND OIL, INC.

455875

Ashland

10652

0353179 001

[illegible]

☒ CASH SALE
☐ CHARGE SALE
☐ CREDIT MEMO
☐ TRANSFER
☐ OTHER

SOLD TO

326 | 00 | CUSTOMER ORDER NUMBER | 10/30/78

| PRODUCT | PRODUCT CODE | QUANTITY | BASE PRICE | FED. TAX | STATE TAX | TOTAL PRICE | AMOUNT | |
|---|---|---|---|---|---|---|---|---|
| REGULAR GASOLINE FLAMMABLE LIQUID | 01050 | 1477 | 460 | 4 | 105 | 605 | 893 | 59 |
| UNLEADED GASOLINE FLAMMABLE LIQUID | 02500 | 2790 | 487 | 4 | 105 | 632 | 1763 | 28 |
| PREMIUM GASOLINE FLAMMABLE LIQUID | 03020 | 999 | 502 | 4 | 105 | 647 | 646 | 35 |
| * KEROSENE COMBUSTIBLE LIQUID | 05000 | | | | | | | |
| * NO. 1 FUEL OIL COMBUSTIBLE LIQUID | 06000 | | | | | | | |
| DIESEL FUEL COMBUSTIBLE LIQUID | 10000 | | | | | | | |
| * NO. 2 FUEL OIL COMBUSTIBLE LIQUID | 12000 | | | | | | | |

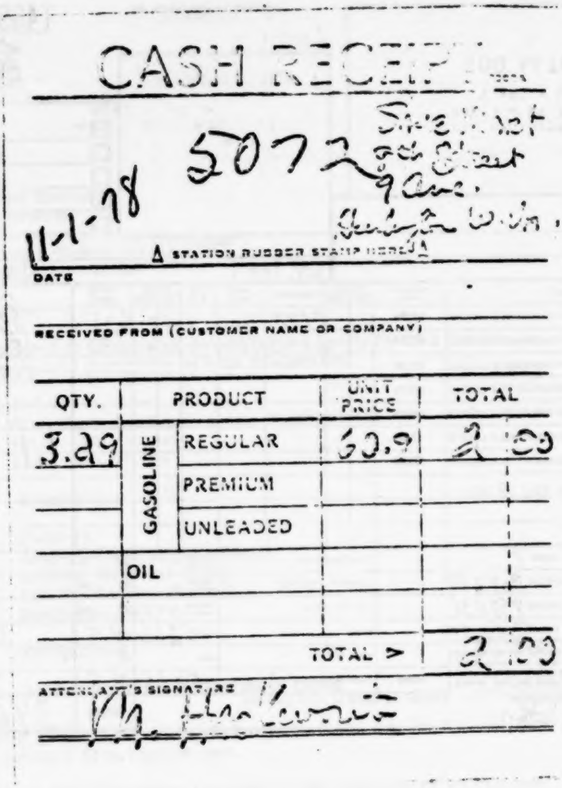
*NOT TO BE USED IN AN INTERNAL COMBUSTION ENGINE

| | |
|---|---|
| CASH | $ |
| CHECKS | 2042 89 |
| CREDITS | 1418 31 |
| TOTAL | 3461 20 |

| | | | | |
|---|---|---|---|---|
| | STATE SALES TAX | TAXABLE AMOUNT $ | @ % | |
| | COUNTY SALES TAX | TAXABLE AMOUNT $ | @ % | |
| | CITY SALES TAX | TAXABLE AMOUNT $ | @ % | |
| | RENT | GAL 5266 | @ 1.5 | 78 99 |
| | RENT CREDIT | GAL | @ | ( ) |
| 77000 | CASH BOND | GAL 5266 | @ 1.5 | 78 99 |
| | | | TOTAL | 3461 20 |

RECEIVED PAYMENT X
DELIVERED BY X

RECEIVED THE ABOVE IN GOOD CONDITION X



# CASH RECEIPT

11-1-78 5072

Save Mart
8th Street
9 Ave.
Huntington W. Va.

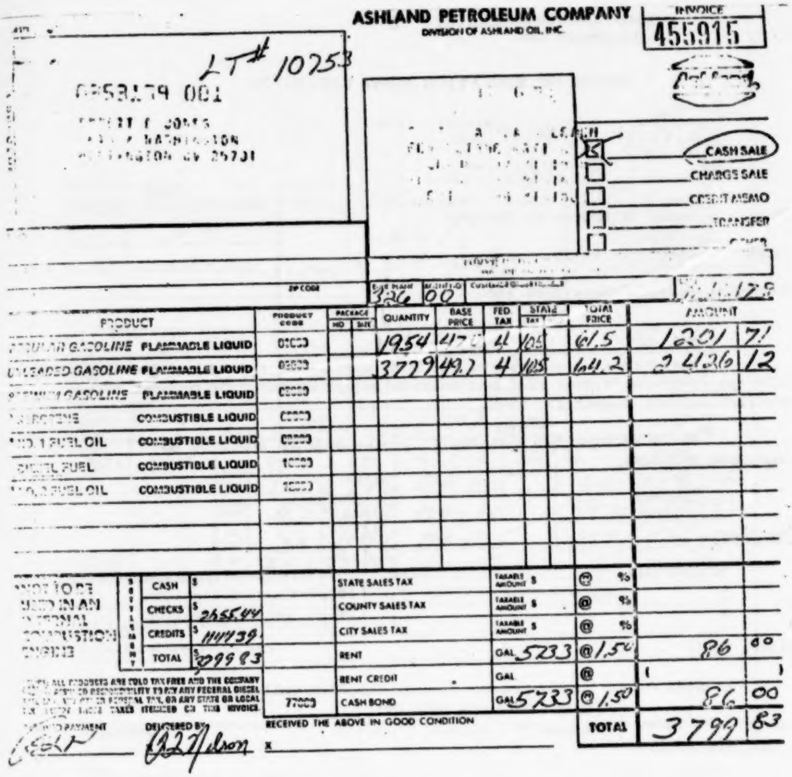
Δ STATION RUBBER STAMP HERE Δ

DATE

RECEIVED FROM (CUSTOMER NAME OR COMPANY)

| QTY. | PRODUCT | | UNIT PRICE | TOTAL |
|---|---|---|---|---|
| 3.29 | GASOLINE | REGULAR | 60.9 | 2.00 |
| | | PREMIUM | | |
| | | UNLEADED | | |
| | OIL | | | |
| | | | | |
| | | | TOTAL > | 2.00 |

ATTENDANT'S SIGNATURE



**ASHLAND PETROLEUM COMPANY**
DIVISION OF ASHLAND OIL, INC.

INVOICE 455915

LT# 10253

0853179 001
[illegible] E JONES
[illegible] W WASHINGTON
[illegible] WV 25701

☒ CASH SALE
☐ CHARGE SALE
☐ CREDIT MEMO
☐ TRANSFER
☐ OTHER

ZIP CODE

| [illegible] | [illegible] | [illegible] | [illegible] |
|---|---|---|---|
| 326 | 00 | | [illegible]129 |

| PRODUCT | | PRODUCT CODE | PACKAGE NO | PACKAGE SIZE | QUANTITY | BASE PRICE | FED TAX | STATE TAX | | TOTAL PRICE | AMOUNT | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| REGULAR GASOLINE | FLAMMABLE LIQUID | 01000 | | | 1954 | 47.0 | 4 | 10.5 | | 61.5 | 1201 | 71 |
| UNLEADED GASOLINE | FLAMMABLE LIQUID | 02000 | | | 3779 | 49.7 | 4 | 10.5 | | 64.2 | 2426 | 12 |
| PREMIUM GASOLINE | FLAMMABLE LIQUID | 03000 | | | | | | | | | | |
| KEROSENE | COMBUSTIBLE LIQUID | [illegible] | | | | | | | | | | |
| NO. 1 FUEL OIL | COMBUSTIBLE LIQUID | [illegible] | | | | | | | | | | |
| DIESEL FUEL | COMBUSTIBLE LIQUID | 10000 | | | | | | | | | | |
| NO. 2 FUEL OIL | COMBUSTIBLE LIQUID | 12000 | | | | | | | | | | |

NOT TO BE USED IN AN INTERNAL COMBUSTION ENGINE

| SETTLEMENT | |
|---|---|
| CASH | $ |
| CHECKS | $ 2655.44 |
| CREDITS | $ 1144.39 |
| TOTAL | $ 3799.83 |

| | | | | | |
|---|---|---|---|---|---|
| | STATE SALES TAX | TAXABLE AMOUNT $ | @ % | | |
| | COUNTY SALES TAX | TAXABLE AMOUNT $ | @ % | | |
| | CITY SALES TAX | TAXABLE AMOUNT $ | @ % | | |
| | RENT | GAL 5233 | @ 1.50 | 86 | 00 |
| | RENT CREDIT | GAL | @ | ( | ) |
| 77000 | CASH BOND | GAL 5233 | @ 1.50 | 86 | 00 |
| | | | TOTAL | 3799 | 83 |

[illegible] ALL PRODUCTS ARE SOLD TAX FREE AND THE COMPANY [illegible] RESPONSIBILITY TO PAY ANY FEDERAL DIESEL [illegible] ANY OTHER FEDERAL TAX, OR ANY STATE OR LOCAL [illegible] TAXES ITEMIZED ON THIS INVOICE.

[illegible] PAYMENT

DELIVERED BY B. J. Nelson

RECEIVED THE ABOVE IN GOOD CONDITION
x

## EXHIBIT "D"

## BOARD OF EDUCATION MEMO #20-78/79

July 12, 1978

To: Board of Education Members

From: Robert E. Kittle

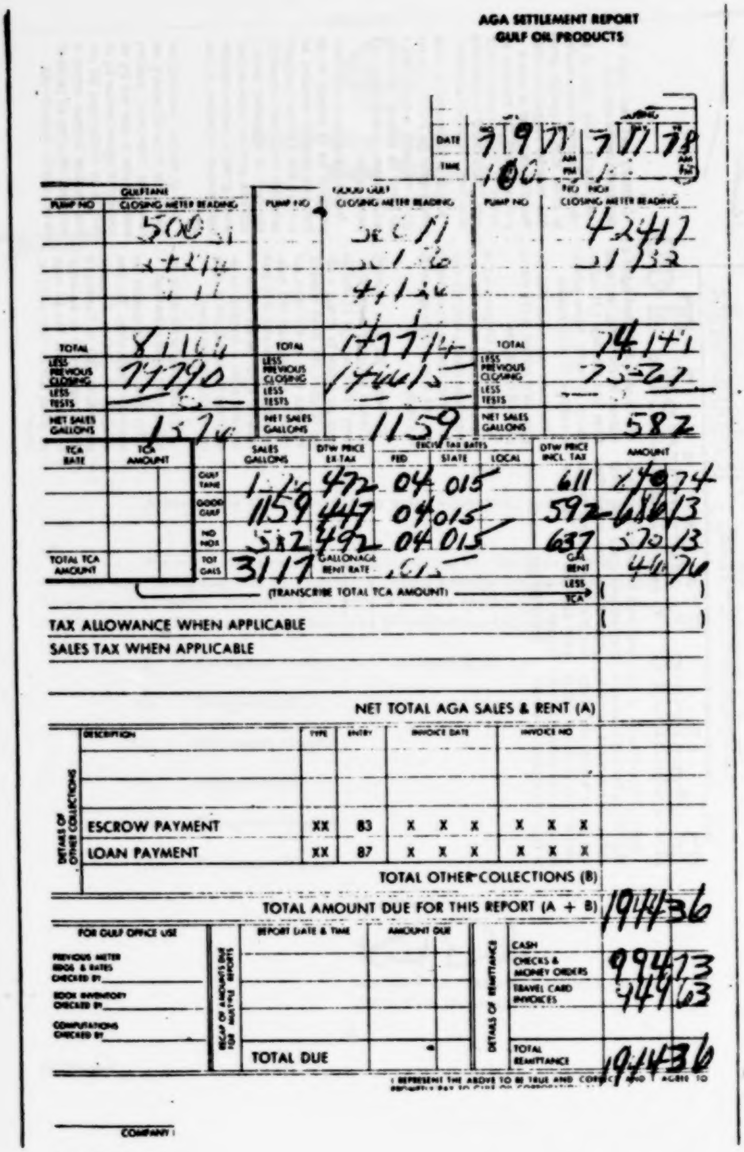
Subject: Fuel and Lubricant Bids

Attached is a summary of the bids which were opened on July 6, 1978 for gasoline, diesel fuel and lubricating products. Our present contract expires August 15, 1978.

It is recommended that the following bids be approved and contracts awarded:

| | *Company* | *Price* |
|---|---|---|
| Gasoline | | |
| | Gulf Oil | .3777 (Regular)/gallon<br>.4107 (Premium)/gallon<br>.4139 (No-Lead)/gallon |
| Diesel Fuel | | |
| | Gulf Oil | .3916/gallon |
| Lubricating Oils and Greases | | |
| | Union Oil | $19,035.95/group |
| Kerosene | | |
| | Pennzoil | .4155/gallon |

REK/DLA:bt
Attachment



**AGA SETTLEMENT REPORT**
**GULF OIL PRODUCTS**

| | | |
|---|---|---|
| DATE | 7 9 77 | 7 11 78 |
| TIME | 100 | 1: |

| PUMP NO | GULFTANE CLOSING METER READING | PUMP NO | GOOD GULF CLOSING METER READING | PUMP NO | NO NOX CLOSING METER READING |
|---|---|---|---|---|---|
| | 500[illegible] | | [illegible] | | 42417 |
| | [illegible] | | [illegible] | | 21732 |
| | [illegible] | | [illegible] | | |
| TOTAL | 81164 | TOTAL | 17774 | TOTAL | 74141 |
| LESS PREVIOUS CLOSING | 77790 | LESS PREVIOUS CLOSING | 14615 | LESS PREVIOUS CLOSING | 73527 |
| LESS TESTS | | LESS TESTS | | LESS TESTS | |
| NET SALES GALLONS | 1376 | NET SALES GALLONS | 1159 | NET SALES GALLONS | 582 |

| TCA RATE | TCA AMOUNT | | SALES GALLONS | DTW PRICE EX TAX | EXCISE TAX RATES FED | STATE | LOCAL | DTW PRICE INCL. TAX | AMOUNT |
|---|---|---|---|---|---|---|---|---|---|
| | | GULF TANE | 1376 | 472 | 04 | 015 | | 611 | 840 74 |
| | | GOOD GULF | 1159 | 447 | 04 | 015 | | 592 | 686 13 |
| | | NO NOX | 582 | 492 | 04 | 015 | | 637 | 370 13 |
| TOTAL TCA AMOUNT | | TOT GALS | 3117 | GALLONAGE RENT RATE | .015 | | | GAL RENT | 46 76 |
| | | | | | | | | LESS TCA | ( ) |

(TRANSCRIBE TOTAL TCA AMOUNT) →

TAX ALLOWANCE WHEN APPLICABLE ( )

SALES TAX WHEN APPLICABLE

NET TOTAL AGA SALES & RENT (A)

DETAILS OF OTHER COLLECTIONS

| DESCRIPTION | TYPE | ENTRY | INVOICE DATE | INVOICE NO | |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |
| ESCROW PAYMENT | XX | 83 | X X X | X X X | |
| LOAN PAYMENT | XX | 87 | X X X | X X X | |

TOTAL OTHER COLLECTIONS (B)

TOTAL AMOUNT DUE FOR THIS REPORT (A + B) 1944 36

FOR GULF OFFICE USE

PREVIOUS METER RDGS. & RATES CHECKED BY________

BOOK INVENTORY CHECKED BY________

COMPUTATIONS CHECKED BY________

RECAP OF AMOUNTS DUE FOR MULTIPLE REPORTS

| REPORT DATE & TIME | AMOUNT DUE |
|---|---|
| | |
| | |
| | |
| TOTAL DUE | |

DETAILS OF REMITTANCE

| | |
|---|---|
| CASH | |
| CHECKS & MONEY ORDERS | 994 73 |
| TRAVEL CARD INVOICES | 949 63 |
| | |
| TOTAL REMITTANCE | 1944 36 |

I REPRESENT THE ABOVE TO BE TRUE AND CORRECT AND I AGREE TO PROMPTLY PAY TO GULF OIL CORPORATION

________
COMPANY

GUS 43596-A

Sunday 1-23-78

Sunday GAZETTE-MAIL / Editorials

# Retailers Victimized, Too

The executive director of the West Virginia Petroleum Council, a child of the nation's oil monopoly, says gasoline retailers may charge what they wish for their product as long as they don't exceed a federally imposed maximum. The inference from the comment, made in response to a query about lower prices in New York, is that West Virginia dealers take a greater profit than their New York counterparts.

During this past week the Kanawha County School Board signed a contract for the coming year to buy from Gulf Oil Corp. 1.75 million gallons of regular octane gasoline at a price of 37.7 cents a gallon.

The dealer rate across West Virginia, we're advised, is 43.8 cents a gallon for regular gas.

Dealers also by law pass along to consumers a higher tax for gas bought than school boards and similar instrumentalities of government pay: 14.5 cents a gallon opposed to 10.5 cents.

For regular gas, we're informed, a dealer's customary charge to patrons varies between 62 and 64 cents per gallon. To dealers a gallon of gas's two fixed charges, wholesale price of 43.8 cents and tax of 14.5 cents, total 58.3 cents, meaning at a sales price of 62 to 64 cents per gallon dealers realize a 4 to 6 cent profit — scarcely exorbitant when the overall cost of doing business is taken into account.

◆

Does Gulf forgo profit selling gas to Kanawha's school authorities?

The answer to that question has important implications. The cost difference on a gallon of regular gas sold by Gulf to Kanawha's school board and to its dealers is 6.1 cents per gallon. This 6.1 cents per gallon is more clear profit for whom?

It clearly isn't more profit for dealers who receive none of it.

Manifestly, then, more is involved in the complicated, relatively untold, story of gasoline prices than increased competition among West Virginia's retail oil outlets — a story perhaps the executive secretary of West Virginia's Petroleum Council should be elaborating on for benefit of the public interest.

If Gulf sells Kanawha's school board regular gas at a 37.7 rate per gallon and makes a profit, what's the profit the company is making selling dealers the same gas at 43.8 cents a gallon?

Indeed, if there is as much competition in the oil industry as the Petroleum Council's executive secretary and various company spokesmen are forever contending, why don't oil companies place a minimum price per gallon on their several grades of gasoline and offer their products to dealers at auction?

But, of course, competition doesn't exist in the oil industry and never has. Otherwise, dealers would be able to play one big oil company off against another big oil company by holding open bid sessions for their business instead of being required to buy all grades of gas on a take it or forget it basis.

EXHIBIT "E"

State Tax Department
of West Virginia
Charleston 25305

RICHARD L. DAILEY
COMMISSIONER

March 7, 1975

Mr. David Hall
Quarrier & Brooks Exxon
1121 Quarrier Street
Charleston, West Virginia

Dear Dave:

Attached is the information you requested, sorry it took so long.

We were concerned about providing all stations and gallonage for only one Company due to statutory requirements imposed upon the Tax Commissioner, therefore we mixed up the stations as to Companies and type of station operation these are provided as follows:

I. Company owned, now independent

II. Independent

III. Company Owned

IV. Independent

V. Company Owned

VI. Company Owned

Very truly yours,

Richard L. Dailey, Commissioner
State Tax Department

RLD:cwf

1

| | 1972 | 1974 |
|---|---|---|
| January | 116,153 | 122,300 |
| February | 116,891 | 98,220 |
| March | 115,416 | 97,461 |
| April | 107,422 | 69,050 |
| May | 112,105 | 96,000 |
| June | 116,788 | 98,500 |
| July | 115,904 | 106,500 |
| August | 101,423 | 99,500 |
| September | 71,031 | 98,514 |
| October | 63,300 | 112,213 |
| November | 50,589 | 98,500 |
| December | 131,438 | 107,002 |
| TOTAL | 1,218,460 | 1,203,760 |

| | 1972 | 1974 |
|---|---|---|
| January | 25,248 | 24,509 |
| February | 23,333 | 31,030 |
| March | 23,517 | 24,654 |
| April | 26,728 | 28,236 |
| May | 23,363 | 33,146 |
| June | 27,217 | 32,819 |
| July | 32,542 | 43,727 |
| August | 29,880 | 37,120 |
| September | 25,662 | 32,351 |
| October | 24,651 | 26,986 |
| November | 28,696 | 23,871 |
| December | 28,011 | 19,522 |
| Total | 318,848 | 357,981 |

III

| | 1972 | 1974 |
|---|---|---|
| January | 38,250 | 125,000 |
| February | 62,326 | 96,000 |
| March | 66,676 | 116,770 |
| April | 60,076 | 110,010 |
| May | 66,751 | 119,150 |
| June | 54,675 | 81,400 |
| July | 56,652 | 108,300 |
| August | 67,276 | 78,000 |
| September | 74,800 | 70,200 |
| October | 71,800 | 85,341 |
| November | 79,000 | 78,122 |
| December | 94,800 | 78,446 |
| TOTAL | 793,082 | 1,146,739 |

IV

| | 1972 | 1974 |
|---|---|---|
| January | 39,218 | 23,611 |
| February | 39,347 | 39,380 |
| March | 31,461 | 23,658 |
| April | 31,485 | 39,384 |
| May | 39,324 | 39,400 |
| June | 31,472 | 37,819 |
| July | 31,516 | 31,520 |
| August | 39,156 | 23,560 |
| September | 31,477 | 23,560 |
| October | 39,382 | 26,790 |
| November | 39,334 | 23,580 |
| December | 39,334 | 24,500 |
| TOTAL | 432,506 | 332,262 |

V

| | 1972 | 1974 |
|---|---|---|
| January | 42,978 | 41,873 |
| February | 77,733 | 23,527 |
| March | 34,215 | 51,904 |
| April | 43,249 | 68,132 |
| May | 17,845 | 74.313 |
| June | 11,702 | 94,323 |
| July | 52,124 | 118,493 |
| August | 78,648 | 132,415 |
| September | 35,432 | 67,833 |
| October | 41,464 | 86,790 |
| November | 36,987 | 36,640 |
| December | 45,774 | 26,020 |
| TOTAL | 518,151 | 822,253 |

VI

| | 1972 | 1974 |
|---|---|---|
| January | 46,151 | 62,095 |
| February | 48,342 | 38,154 |
| March | 44,960 | 37,655 |
| April | 39,388 | 38,825 |
| May | 46,922 | 34,884 |
| June | 39,236 | 28,037 |
| July | 54,393 | 40,010 |
| August | 46,338 | 37,563 |
| September | 39,521 | 31,720 |
| October | 46,638 | 63,130 |
| November | 47,734 | 45,915 |
| December | 46,744 | 54,536 |
| TOTAL | 546,367 | 512,524 |

A letter from a concerned consumer

EXHIBIT "F"

R. W. MILLER
579 EDGEHILL DR.
ST. ALBANS, W. VA. 25177

JUNE 23, 1978

GULF OIL CORPORATION
GULF BUILDING
P. O. BOX 1166
PITTSBURGH, PENNSYLVANIA 15230

ATTN: MR. JERRY MC AFEE, CHAIRMAN &
CHIEF EXECUTIVE OFFICER

Dear Mr. McAfee,

Recently, your company opened a new self serve station on Rt. 60, St. Albans, W. Va. Four blocks from this location is Webbs Gulf Service Center on 6th Avenue, St. Albans, W. Va.

Your Self Serve Stations under cut the Independent gasoline retailers on gas prices. You offer No services to the Consumer, you employ one person in a self serve station. Webb's Gulf Center employs many good local employees and pays high taxes on all personnel.

I own four (4) automobiles and get excellent service from Bill Webb. He makes service calls for flat tires, dead batteries, and on just simple; "Car won't start - winter weather deal." From him I buy gas, tires, batteries, car services, oil, filters, and brake repaires. I could go on & on!

It bothers me that the Giant Oil Companys open Self Serve Stations and put themselves in a competitive position with the Independent Service Station Operator; the business man that has been the "King-Pin" in building the giant oil companys into the large corporations they are today.

Think about it; "What would you do without the Independent Station Operator?" "The Free Enterprise System?" "Are you being fair to the dealers that made you big?" "Are you being fair to the American Consumer?"

"Personally, I do not like, Self Serve Stations - I do not want to put in my own gas or fix my own flat tires, change my own oil, and etc!" I have been on both sides of the pump--I owned a station years ago. I have been a Gulf Credit Card holder for several years; #44647-966570879.

Surely your Independent Dealers have enough competition without you going into the retail business against them, plus cutting the price.

I believe, we the consumers deserve to keep the good service we have always enjoyed from the Independent Dealers.

Sincerely,

R. W. Miller

R. W. Miller

CONTINUED......

rwm/kc

C.C. SEN. WILLIAM T. BROTHERTON, PRESIDENT
WEST VIRGINIA STATE SENATE
STATE CAPITAL BLDG.
CHARLESTON, W. VA. 25305

C.C. MARVIN GRAY, EXECUTIVE DIRECTOR
W. VA. GASOLINE DEALERS ASSOCIATION
617 6TH AVENUE
HUNTINGTON, W. VA. 25701

C.C. BILL WEBB, OWNER
WEBBS GULF SERVICE CENTER
6TH AVENUE
ST. ALBANS, W. VA. 25177

P.S. **Just received my Gulf Bill yesterday for the month of May for---$205.00----------------------------------**

## Appendix M.—Statements submitted by oil Companies, re: H.R. 6722

### Exhibit 1: Agway Petroleum Corporation

AGWAY PETROLEUM CORPORATION, BOX 4852, SYRACUSE, NY 13221

June 3, 1980

The Honorable Berkley Bedell
405 Cannon House Office Building
Washington, D. C. 20515

Dear Mr. Bedell:

Agway Inc. is a tax paying business enterprise which operates on cooperative principles and is owned by 123,000 farmer/members in the 12 Northeastern states. Agway is perhaps best known as a source of animal feed, seed, fertilizer, and other farm and home supplies which are distributed through a network of retail outlets. Agway has about 10,000 employees.

Agway Petroleum Corporation is a wholly owned subsidiary of Agway Inc.

As Manager of Energy Regulations and Government Affairs for Agway Petroleum Corporation, I have enclosed for your information comments and concerns Agway has concerning Bill H.R. 6722.

If after reviewing the enclosed material outlining Agway's opposition to H.R. 6722 you wish additional information, please do not hesitate to contact me.

Sincerely yours,

George A. Puzey

George A. Puzey, Manager
Energy Regulations & Government Affairs

GAP/b
Encl

# WRITTEN COMMENTS SUBMITTED TO:
# ANTITRUST AND RESTRAINT OF TRADE SUBCOMMITTEE
# OF THE HOUSE SMALL BUSINESS COMMITTEE
# AND
# CONSUMER PROTECTION AND FINANCE SUBCOMMITTEE
# OF THE HOUSE INTERSTATE AND FOREIGN COMMERCE COMMITTEE

## ON H. R. 6722

## (SMALL BUSINESS MOTOR FUEL MARKETER PRESERVATION ACT OF 1980)

SUBMITTED BY: GEORGE A. PUZEY
MANAGER, ENERGY REGULATIONS
AND GOVERNMENT AFFAIRS

AGWAY PETROLEUM CORPORATION
BOX 4852
SYRACUSE, NY 13221

## BACKGROUND ON AGWAY INC.

AGWAY INC. IS A TAX-PAYING BUSINESS ENTERPRISE WHICH OPERATES ON COOPERATIVE PRINCIPLES AND IS OWNED BY 123,000 FARMER MEMBERS. AGWAY IS PERHAPS BEST KNOWN AS A SOURCE OF ANIMAL FEED, SEED, FERTILIZER AND OTHER FARM AND HOME SUPPLIES. THESE ARE DISTRIBUTED THROUGH A NETWORK OF RETAIL OUTLETS IN 12 NORTHEASTERN STATES. AGWAY HAS ABOUT 10,000 EMPLOYEES.

PETROLEUM PRODUCTS -- GASOLINE, DIESEL FUEL AND LUBRICANTS -- ARE AS IMPORTANT TO THE MODERN FARMER AS SEED OR FERTILIZER. BECAUSE OF THIS, AGWAY'S PREDECESSOR COOPERATIVES BECAME INVOLVED IN THE PETROLEUM BUSINESS IN THE 1930'S. AFTER EXPERIENCING DIFFICULTY IN OBTAINING PETROLEUM DURING WORD WAR II, THEY PURCHASED AN INTEREST IN A REFINERY, AND TODAY AGWAY PETROLEUM OWNS TWO-THIRDS OF THE OUTSTANDING CAPITAL STOCK OF TEXAS CITY REFINING INC., OF TEXAS CITY, TEXAS. THE REFINERY HAS A CERTIFIED CAPACITY OF 126,700 BARRELS PER DAY. IT IS CLASSIFIED BY THE U.S. DEPARTMENT OF ENERGY AS AN "INDEPENDENT REFINER" IN THAT IT MUST PURCHASE MOST OF THE CRUDE OIL IT PROCESSES FROM OTHERS. IT IS 95% CRUDE DEFICIENT.

UNDER NORMAL OPERATING CONDITIONS, TEXAS CITY WILL PROVIDE AGWAY ABOUT 97% OF ITS PRODUCT REQUIREMENTS. THE BALANCE IS PURCHASED THROUGH OTHER CONTRACTURAL AGREEMENTS.

AGWAY PETROLEUM PRODUCTS ARE DISTRIBUTED IN THE NORTHEAST FROM 15 TERMINALS OPERATED BY AGWAY PLUS 22 TERMINALS OPERATED BY OTHER COMPANIES THROUGH A NETWORK OF 139 BULK PLANTS AND 40 RETAIL GAS

STATIONS. THE BULK PLANTS SERVE AS LOCAL STORAGE FACILITIES, AND AS THE BASE FOR DELIVERY OF POWER FUELS TO FARM BULK TANKS, HOME HEATING OIL DELIVERY, AND EQUIPMENT SALES AND SERVICE. AGWAY OPERATES ALL OF THESE FACILITIES WITH ITS OWN EMPLOYEES. WE DO PROVIDE GASOLINE TO SOME SMALL VOLUME DEALERS WHO ARE LOCATED PRIMARILY IN RURAL AREAS AS A RESULT OF HISTORICAL COMMITMENT. HOWEVER, AGWAY DOES NOT AND NEVER HAS HAD A FORMAL DEALER OR FRANCHISE ORGANIZATION.

AS A FARM SUPPLY COOPERATIVE, AGWAY HAS A SPECIAL COMMITMENT TO FULFILL FARMER PETROLEUM REQUIREMENTS. A COMMITTEE OF AGWAY FARMER MEMBERS, RESIDING IN THE AREA SERVED, PROVIDES GUIDANCE ON THE OPERATIONS OF EACH LOCAL BULK PLANT.

## RETAIL SALES IMPROVE BULK PLANTS ECONOMIC VIABILITY BY ADDING VOLUME

HISTORICALLY, AGWAY INITIATED RETAIL GASOLINE SERVICE AT BULK PLANTS AS A RESULT OF THE CHARACTERISTICS OF FARM MARKETS WHICH MAKE THEM VERY EXPENSIVE TO SERVE. FARM TANK CAPACITIES ARE SMALL, DEMAND IS SEASONAL, FARMS TEND TO BE LOCATED AWAY FROM NORMAL DELIVERY ROUTES AND GENERALLY CANNOT BE SERVED BY TRANSPORTS WHICH ARE MORE ECONOMICAL TO OPERATE THAN SMALLER TANK WAGONS. RETAIL GASOLINE SALES AT BULK PLANTS ALLOW US TO INCREASE OVERALL VOLUME AND SPREAD COSTS; THUS, HELP TO MAKE THE OPERATION OF FARM SERVICE ECONOMICALLY VIABLE.

## AGWAY OPPOSED TO DIVORCEMENT IN PRINCIPLE

WHILE THIS BILL AS PRESENTLY WRITTEN DOES NOT REQUIRE AGWAY PETROLEUM TO DIVORCE ITS RETAIL GASOLINE STATION OPERATIONS, AGWAY

IS OPPOSED BECAUSE WE ARE OPPOSED TO DIVORCEMENT AS A MATTER OF GENERAL PRINCIPLE. AGWAY FAVORS A "FREE MARKET" WHILE RECOGNIZING THAT AS "PROBLEMS" ARISE GOVERNMENT WILL FEEL THE NECESSITY TO INTERVENE. WE BELIEVE THAT "SOLUTIONS" TO "PROBLEMS" WHICH INVOLVE A "MINIMUM OF GOVERNMENT INTERVENTION" AND TREND TOWARD A "FREE MARKET" SITUATION AS QUICKLY AS POSSIBLE ARE IN THE LONG-TERM BEST INTERESTS OF ALL PARTIES CONCERNED.

## CONCERNS ABOUT SPECIFIC SECTIONS

AGWAY IS CONCERNED THAT THE SECTIONS OF H.R. 6722 COMMENTED ON IN FOLLOWING PARAGRAPHS MAY ADVERSELY AFFECT AGWAY AND OUR FARMER-MEMBERS.

## SECTION 3(a)(2)(B)(ii)(II) - DEALERS RIGHT OF FIRST REFUSAL

THIS SECTION WOULD ALLOW THE DEALER TO BUY THE STATION FROM THE REFINER FOR LESS THAN THE PRICE OFFERED THE REFINER IN A BONA FIDE OFFER UNDER CERTAIN CIRCUMSTANCES. IF SOMEONE OFFERED THE REFINER MORE THAN THE DEALER THINKS THE STATION IS WORTH, THE DEALER CAN COUNTER THE OFFER TO THE REFINER WITH A LOWER PRICE. UNDER THIS SECTION, THE REFINER MUST THEN OFFER TO SELL THE STATION TO THE DEALER AT A PRICE TO BE DETERMINED BY AN "INDEPENDENT APPRAISER". IF THE APPRAISER VALUES THE PROPERTY BELOW THE BONA FIDE OFFER, THE DEALER GETS THE PROPERTY AT THE LOWER PRICE. (THE DEALER COULD THEN TURN AROUND AND SELL THE PROPERTY TO THE ORIGINAL PROSPECTIVE BUYER AT A PROFIT). THIS GOES FAR BEYOND THE "RIGHT OF FIRST REFUSAL" TO GIVE THE DEALER AN UNFAIR ADVANTAGE IN PURCHASING THE STATION.

## SECTION 3(B)(1)(A) - EFFECT OF DECLINING SALES THRU OTHER THAN OPERATED STATIONS

THIS SECTION SEEMS UNNECESSARY IN THAT IT APPLIES ONLY TO A REFINER WHOSE SALES TO OTHER THAN OPERATED STATIONS ARE DECLINING, WHILE SALES TO OPERATED STATIONS ARE STEADY (OR DECLINING MORE SLOWLY THAN SALES TO OTHER THAN OPERATED STATIONS). SUCH A REFINER IS NOT A MAJOR THREAT TO OTHER STATION OPERATORS SINCE THIS REFINER'S SALES TO OPERATED STATIONS ARE ALREADY STAGNANT OR DECLINING. (IF SALES TO OPERATED STATIONS WERE INCREASING SECTION 3(B)(1)(B) WOULD APPLY.) IT SEEMS UNDULY HARSH TO PENALIZE A REFINER IF GALLONAGE TO OTHER CUSTOMERS DECLINES FASTER THAN GALLONAGE TO OPERATED STATIONS.

## SECTION 3(B)(2)(B) - EXPANDED SALES THRU OPERATED STATIONS LIMITED

UNDER THIS SECTION IT WOULD BE NECESSARY FOR AGWAY TO EXPAND THE UNIT VOLUME SOLD TO OTHER THAN OPERATED STATIONS IN ORDER TO EXPAND UNIT VOLUME SOLD THRU OPERATED STATIONS. REALISTICALLY THIS MEANS THAT AGWAY WOULD HAVE TO CREATE A FRANCHISED DEALER NETWORK IN ORDER TO SIGNIFICANTLY EXPAND SALES THRU OPERATED STATIONS.

THIS LEGISLATION WILL FORCE COMPANIES TO USE MARKETING APPROACHES THAT ARE NOT THEIR BEST OPTIONS. AS A RESULT THEIR COSTS WILL INCREASE AND ULTIMATELY BE PASSED ON TO THE CONSUMER. IN ORDER TO SURVIVE COMPANIES MUST CONTINUOUSLY SEEK GROWTH OPPORTUNITIES. IF THEY DO NOT GROW UNIT COSTS WILL INCREASE MAKING THEM UNCOMPETITIVE.

## SECTION 3(C)(1) - EQUAL PRICES FOR EQUAL QUANTITIES

PREDATORY PRICING IS ALREADY ILLEGAL. FURTHER, GASOLINE PRICES

ARE CONTROLLED BY THE DEPARTMENT OF ENERGY UNDER THE MANDATORY PETROLEUM PRICE REGULATIONS. THESE REGULATIONS HAVE TO BE CONSTANTLY REVISED IN ORDER TO CORRECT DISTORTIONS IN THE MARKETPLACE EVEN THOUGH THESE REGULATIONS ORIGINALLY INTENDED ONLY TO "LOCK IN" THE "FREE MARKET" PRICE ON MAY 15, 1973. HOPEFULLY, A REVIEW OF THE PROBLEMS WITH GOVERNMENT REGULATED PRICES UNDER THESE PROGRAMS WOULD DISCOURAGE FURTHER ATTEMPTS TO LEGISLATE PETROLEUM PRICES.

AS THIS SECTION IMPLIES, THERE ARE MANY FACTORS THAT CREATE "DIFFERENCES" IN PRICES. CALCULATING THEIR DOLLAR EFFECT ON EACH SALE, OR CUSTOMER, IS DIFFICULT AND COSTLY ENOUGH. A WRITTEN BILLING PROCEDURE THAT WOULD BE UNDERSTANDABLE BY THE CUSTOMER AND IMPLEMENTABLE AT REASONABLE OPERATING COSTS IS VIRTUALLY IMPOSSIBLE.

THE MOST LIKELY CONSEQUENCE OF THE PRICING RULES PROPOSED UNDER THIS SECTION WOULD BE AN UNPRODUCTIVE INCREASE IN THE COST, TIME AND EFFORT EXPENDED TO "JUSTIFY" PRICE DIFFERENCES. THESE EFFORTS AND EXPENDITURES CAN BE MORE EFFECTIVELY AND PRODUCTIVELY SPENT ON SOLVING THE ENERGY SHORTAGE THAN IN NON-PRODUCTIVE "ACCOUNTING EXERCISES" IN AN AREA ALREADY COVERED BY D.O.E. REGULATIONS.

## CONCLUSION

IN CONCLUSION, AGWAY IS OPPOSED TO H.R. 6722 BECAUSE RETAIL DIVORCEMENT CONSTITUTES FURTHER INTERFERENCE IN THE MARKETPLACE. (WE RECOGNIZE THAT AGWAY IS NOT REQUIRED TO DIVORCE ITS RETAIL OPERATIONS UNDER THIS SPECIFIC PROPOSAL.)

FURTHER CONCERNS ARE:

1. SECTION 3(A)(2)(B)(II)(II) ALLOWS THE POSSIBILITY OF A DEALER BUYING THE STATION HE OPERATES FROM THE REFINER FOR LESS THAN THE REFINER HAS BEEN OFFERED BY ANOTHER PARTY. THIS GOES FAR BEYOND THE "DEALERS RIGHT OF FIRST REFUSAL."
2. SECTION 3(B)(1)(A) SEEMS UNNECESSARY AND UNDULY HARSH IN THAT IT PENALIZES A REFINER IF GALLONAGE TO OTHER THAN OPERATED RETAIL STATIONS DECLINES FASTER THAN GALLONAGE TO OPERATED RETAIL STATIONS.
3. SECTION 3(B)(1)(B) RESTRICTS GROWTH OPPORTUNITIES HINDERING A COMPANY'S ABILITY TO OFFSET RISING COSTS BY INCREASING VOLUME.
4. SECTION 3(C)(1) SEEMS UNNECESSARY IN THAT PRICES ARE ALREADY CONTROLLED BY D.O.E. REGULATIONS.

GAP/SAM
5/30/80

## EXHIBIT 2: AMOCO OIL COMPANY

**Amoco Oil Company**
200 East Randolph Drive
P.O. Box 6110-A
Chicago, Illinois 60680
312-856-2465

H. Laurance Fuller
President

June 12, 1980

The Honorable Berkley Bedell
U. S. House of Representatives
Room 450, Cannon Building
Washington, D.C. 20515

Dear Berkley:

I enjoyed very much the opportunity to represent the API and to testify before your subcommittee last week. I hope my comments will prove to be useful in your deliberations on H.R. 6722.

As I stated in my testimony last week, Amoco intended to submit its own written comments on this bill. These comments are specific to our company. Our comments are summarized on the first page attached, and given in greater detail in the remainder of our submission.

Again, I thank you for the opportunity to testify on H.R. 6722 before your subcommittee. If you have any additional questions, please let me know.

Very truly yours,

Attachment

## SUMMARY OF AMOCO OIL COMPANY WRITTEN COMMENTS ON H.R. 6722

### AMOCO IS A DEALER ORIENTED COMPANY

Amoco shares the Small Business Committee's concern with the problems facing service station dealers. More than 7,300 of our 7,400 company supplied stations are run by independent dealers. In addition, 51 per cent of our marketing is done through Amoco jobbers who supply another 14,000 outlets.

### PROBLEMS FACING DEALERS

The main problems facing the dealers can be summarized under three headings: Changing marketplace, DOE regulations, and increasing competition from non-traditional sources. Obviously, the marketplace has changed dramatically since the pre-embargo days. Brand Loyalty has been eroded. Customers have traded service for price incentives.

Less obviously, dealers are often disadvantaged by DOE regulations which mandate assignments of crude and product from their suppliers to the suppliers of their competitors. Even though Amoco had the lowest allocation fractions in the industry, until recently, we were required to deliver 50,000 barrels of crude a day to competitors. In spite of the fact that we were conducting our own gasohol test, DOE regulations required us to supply gasoline for gasohol blending to companies which compete with our own dealers.

Finally, the dealer has been subject to competition from large retail chains like Sears and Penney's and highly advertised specialty services like Midas and Aamco.

### H.R. 6722 DOES NOT ADDRESS THESE REAL PROBLEMS

H.R. 6722 does not address these problems. In fact, it is likely to add to them by prohibiting company operated stations and permitting the expansion of chain operated salaried stores.

### H.R. 6722 WILL INHIBIT DIVERSITY IN THE MARKETPLACE

As written, H.R. 6722 will force all companies into one mold denying both the companies and their customers the chance to benefit from different approaches and marketing strategies.

### RACK PRICING PROVISIONS WILL WEAKEN BRANDED MARKETING AND BRANDED DEALERS

Dealers and jobbers pay different prices for their product as a reflection of the different services they receive from suppliers and provide to their outlets. Dealers stations represent a sizeable investment for the company in siting, recruiting, training, and marketing assistance. Jobbers provide these services themselves and spare suppliers that investment. In addition, jobbers often provide secondary storage and carry their own accounts receivable. Anything that weakens this system weakens our ability to provide these services or requires the jobber to recover his operating expenses in the cost of other products such as heating oil or diesel fuel.

### H.R. 6722 DUPLICATES OTHER LEGISLATION ALREADY ON THE BOOKS

The Robinson Patman Act and the Petroleum Marketing Practices Act both already prohibit the practices which H.R. 6722 seeks to redress. But both of these bills retain the advantages of protecting different channels of sale.

### AMOCO RECOMMENDATIONS

Although Amoco opposes H.R. 6722, there are steps the Committee could take that would materially improve the position of the dealer: One, crude and product decontrol would permit the dealer access to volumes of product for new and rebuilt stations.

Two, defer further consideration of the bill until the results of the PMPA become available.

And three, preserve the variety of strategies in the marketplace. Petroleum marketing is an extremely competitive business with special marketing strategies aimed by many companies at different segments of the market. Nothing should inhibit this diversity of marketing approaches.

# COMMENTS OF AMOCO OIL COMPANY FOR
# THE COMMITTEES ON SMALL BUSINESS AND INTERSTATE AND FOREIGN COMMERCE

ON

H.R. 6722

WASHINGTON, D.C.

JUNE 4, 1980

Amoco shares the Committee's concern with the problems facing small businesses. Although we are the nation's second largest gasoline marketer, our marketing operation is built on the approach of a strong dealer/jobber network. Anything that affects the viability of these dealers and jobbers affects Amoco. Also, it is important to realize that the viability of any independent dealer is dependent on the strength of the branded marketer that he represents.

We as a company operate fewer than 100 of our 7,400 company-supplied stations. We operate those because of toll road contracts which call for such involvement, or as training stations, or for developing new marketing techniques. The remaining 7,300 are run by independent dealers.

Approximately 51 per cent of our marketing is done through the jobber channel. Our 2,300 jobbers supply another 14,000 Amoco brand stations.

Our company-operated stations do not significantly impact on our dealers nor have they received better treatment because we operate them. For example, the throughput at Amoco Company operated stations has increased by about 30 per cent over the past seven years. At our dealer stations, on the other hand, the increase in throughput has averaged about 50 per cent.

Much of the problem facing the dealer was articulated by many of the people who testified at the May, 1980, hearings that are the impact of government and regulatory activities. We are pleased that you are looking ahead to decontrol. Frankly, we think that is the best thing that could happen to the dealers. They could then be freed to open new stations or remodel existing ones to increase sales. These are things they can't easily do under the existing regulations.

Also, to get an idea of what may happen after decontrol, we could look back to the period before controls—before 1973. At that time, the marketplace was also quite diverse, but the dealer was faring well. In fact, at that time, the major accusation was that the major oil companies were subsidizing their dealers.

At Amoco, we are still training new dealers and providing car care schools and programs. We would be replacing or rebuilding many obsolete facilities—if we could be sure of permission to supply them with an adequate base period product allocation.

We share the Committee's concern over the problems facing the small business people who operate the country's service stations. Dealers have experienced particularly onerous difficulties in the past few years. Increasing price consciousness resulting from OPEC price increases has hurt traditional loyalties, and the impact of government regulations has not allowed dealers to grow over the past several years--in fact, it has caused them to lose volume, especially during shortage periods.

Newly price conscious customers made service a secondary consideration in many cases and began shopping for the best price. This trend changed the face of the traditional service station. Dealers then had to begin competing with pumpers and no-frills marketing by going to self-serve concepts and split islands to accommodate the various and changing needs of different customers.

Different suppliers have had different crude availability problems. For example, Amoco was particularly hard hit by last year's Iranian shut-in and subsequent nationalization of our production there. As a consequence, we were forced to allocate product to our dealers at levels about 70 per cent of those of previous years deliveries.

In many cases problems of dealers have been compounded by Department of Energy regulations. For example, at the same time Amoco dealers were receiving 70 per cent of their allocations--and even thugh Amoco was conducting its own gasohol test—we received an order to deliver 199,000 barrels of unleaded gasoline each month to a gasohol blender.

This was equal to Amoco's deliveries of lead-free gasoline for the whole state of Missouri. In the original order, the assignment was undivided and not subject to allocation fraction. This meant in effect that an unknown blender with no dealers, no jobbers, no distribution network, and no customers had his full assignment. And our dealers with years spent building their businesses had to take further reductions to accommodate the assignment.

In the final decision, the Office of Hearing and Appeals did divide the assignment and reduce Amoco's share. But, until recently, we have had to supply about 50,000 barrels a day of our crude oil to other refiners. If we replace that crude with high-priced spot market crude purchases, then our prices to the dealers go higher than what our competition charges.

Dealers have also taken the brunt of the DOE's certification rules. As those rules now read, refiners must certify downward whenever one of their accounts closes. The product that formerly went to the closed location must then be allocated back into the system across all channels of sale nationwide. On the other hand, when a jobber station closes, the volume is retained by the jobber and distributed to his other stations.

Additionally, a dealer cannot upward certify without showing serious financial hardship. A jobber, on the other hand, can build a new station or buy an abandoned one and automatically upward certify to his supplier, who must then supply. Some of this product to cover a jobber's upward certification must come from the supplies of existing dealers—whose deliveries are thus further reduced.

This takes gasoline out of the dealer channel and out of the urban areas that dealers predominantly serve. It makes it difficult to have supplies available for new locations or rebuilt sites. In effect, it forces a dealer to stay in an unprofitable location because the procedural difficulties of opening a new station present too much uncertainty.

Amoco is fully aware of the many challenges that dealers face. In spite of this awareness—or perhaps because we know the source of many of the dealer problems--we oppose H.R. 6722. We do so for what we consider to be overriding philosophical and practical reasons.

Philosophically, we agree with Chairman Bedell who has stated in other forums that the petroleum industry is over-regulated—and that government intervention in the marketplace generally creates more problems than it solves.

Frankly, we fail to understand how adding another layer of regulation will improve the situation. With respect to creating more problems, we feel certain that it will do so at least for the dealers. As now written, H.R. 6722 will open the door to salary-operated chain marketers. It is very likely the dealer will end up with no improvement in his own ability to compete—and with competitors who have been lured into expansion by H.R. 6722.

Left to itself, the marketplace will sort out the most efficient and economical marketing strategies. Legislative and regulatory interference simply inhibit this process by arbitrarily providing a windfall for one strategy at the expense of other strategies.

Diversity in marketing strategies allows for competition, gives the customer the choice, and leads to the most efficient solutions for each company. Measures that inhibit diversity or try to impose one procedure on different firms will ultimately cost the consumer.

Practically, we oppose the bill for four reasons:

First, we believe the perceived need for H.R. 6722 is based on faulty data.

Second, we don't believe the bill takes into consideration all the reasons for which service stations go out of business.

Third, the rack pricing portions would work to the detriment of both jobber and dealer channels—channels which have been preserved by the effect of the Robinson-Patman Act.

And fourth, in establishing penalties for certain actions by refiners, the bill duplicates legal provisions already in effect.

With respect to faulty data, the staff material supporting the need for H.R. 6722 attempts to correlate a fact and an assertion. The fact is that over the last seven years, on industrywide basis, the number of company-operated stations has increased by 2,800. The assertion is that over the same period, the number of dealer-operated stations has declined by about 80,000.

We do not believe that such a correlation is possible. There is no way that 3,800 stations could drive 80,000 otherwise viable stations out of the market. We believe that the numbers do not take into account the fact that many stations have not been closed —but have been transferred to jobber suppliers who do not report their accounts to the Department of Energy.

In Amoco's case alone, we have transferred about 5,000 stations to jobber suppliers in the past several years.

Secondly, since jobbers do not report their accounts—old or new—and since jobbers can certify upward to their suppliers at will, the figures don't show how many new stations have been opened by jobber suppliers.

The data cited also fail to account for the number of occasions in which some small businesses are being replaced by other small businesses. Both the Appendix I of the last hearing—and the report by the DOE Office of Competition—note that jobber and unbranded dealer channels of sale have grown in the last seven years. Today, in fact, about half of the gasoline sold moves through these channels.

Appendix J of the last hearing on this topic acknowledges that the staff neglected unbranded jobbers, unbranded dealers, and chain marketers in gathering its data.

The failure of the staff to consider about half of the total volume of gasoline now being sold would naturally distort its conclusions. And the failure to recognize the pitfalls in raw DOE data would greatly exaggerate the apparent decline in the number of service stations.

The data are further flawed by the staff's over-emphasis on the alleged motives of refiners for operating their own stations to the exclusion of dealers. In fact, the report of the Office of Competition of the DOE indicates that ony eight out of 29 companies are moving significantly in that direction. These eight include only three majors: Gulf, Sohio, and Mobil. Neither Gulf nor Mobil is more than about five or six per cent committed to company - operated stations.

Sohio is about 85 per cent company-operated, but Sohio has historically operated a large percentage of their stations.

Other companies cited for company operating are generally smaller refiners. In one case, Vickers, we see the reverse situation. There, an established chain marketer bought a refinery in a move toward backward integration. So in that instance we have a marketer company operating a refinery. H.R. 6722 would inhibit this type of increased competition by a small business.

We don't understand why the marketing strategies of a minority of companies should receive so much more attention than those of the majority.

The second reason we oppose the bill is that it ignores the reasons why stations go out of business. The decline of the full service stations is part of a natural phenomenon. In the 1950's, with a surplus of crude oil and product available, service stations were overbuilt. In today's market, with fewer gallons to sell, marginal stations have gone out of business.

The staff report concentrates on the alleged competition with refiner - operated stations as a reason for this decline. In so doing, it ignores the fact that nongasoline sales and services account for about 50 per cent of any dealer's earnings.

Apart from normal business cycles—and today's abnormal inflation rate—service stations are vulnerable to other factors:

Customer populations shift. Facilities become obsolete. It is becoming more difficult to replace dealers and mechanics when other jobs offer equal pay and more flexible lifestyles while not demanding any front -end investment. Improved auto technology means less routine maintenance for the dealer. The growth of the do-it-yourself trend means still less. There is now competition from chain stores like Sears and Pennys on one hand—and specialized, highly advertised firms like Aamco, Midas, and Goodyear on the other.

None of these factors is within the remedies proposed by this legislation. The law will not change the rate of obsolescence of facilities. It won't inhibit population shifts. It won't halt do-it-yourselfers.

Even if refiners were limited in the number of stations they could company-operate—even if refiners were limited in the proportion of gallons they could sell through company-operated locations, dealers would still be closing for the reasons I mentioned.

Ulltimately, by restricting the marketing options available to refiners, the bill would restrict the buying options available to consumer. And it would do so without benefitting anyone.

Our third reason for opposing the bill is more restricted than the first two—but no less important to the small businessmen likely to be affected. We oppose the rack pricing provision.

These provisions fail to recognize the importance of the jobber in the distribution of petroleum products. Jobbers are the wholesalers who supply thousands of stations in what are primarily rural areas of the country. In Amoco's case, our 2,300 jobbers supply about 14,000 outlets.

When we sell through a dealer, we must invest our own capital in a station: We must select the site, improve it, equip it for a viable business, recruit, train, and provide marketing assistance for the dealer. This involves considerable expense. For example, with Amoco's meter marketing transfer, the gasoline in the dealer's station remains Amoco's until it is sold. This means the dealer doesn't have to pay in advance of his cash flow—nor does he carry any significant accounts receivable because of Amoco's credit card system.

By contrast, when we sell through a jobber, we are spared such expenses. The jobber finds the location, makes it viable, trains and backs up the dealer. Our record-keeping for one large account is smaller than for many small ones. In addition, the jobber provides additional secondary storage, transportation, and carries his own accounts receivable and inventory.

A legislative fiat imposing a single price system for both jobbers and dealers will not lessen the cost of the services we provide the dealer; nor will it encourage the dealer to provide those services for himself as the jobber now does for himself.

It will simply mean that we would not be able to perform for the dealer those services we now perform; or that we would not be able to allow the jobber a price that reflects the value of the services he performs. The jobber would not be able to recover his operating expenses in gasoline sales.

We do not see how either dealers or jobbers would benefit from having one single price imposed on the diverse needs of the entrepreneurs now serving the marketplace. It is much more likely that such a provision would force a jobber to raise the mark-up on his heating oil, diesel fuel sales, and other services to stay in business.

Open supply and rack pricing would allow dealers to buy gasoline at various terminals. This could lead to the eventual downfall of branded marketing, and with it the dealer, whom this bill seeks to protect.

Our fourth objection is the fact that the bill would duplicate the provisions of several statutes already in force. For example, the open stock provision is already a matter of law. Amoco's lease provides for it.

Other provisions are also duplicated by the Robinson-Patman Act and the Petroleum Marketing Practices Act. Both of thse acts provide specific penalties for the practices which H.R. 6722 seeks to redress in the way of dealer terminations and company operations.

In addition, both bills retain the advantages of preserving dealers and jobber channels of sale.

A final consideration of the Small Business Committee would, of course, be the effect of this bill on the consumer.

One fact to consider is that company operations are often the lowest price in a given market area. Would the consumer—or competition—benefit by losing access to the lowest price available? The recent published comments by Conoco as they abandoned their Kayo operation in Maryland are a good case in point.

Similarly, divestiture of company-operated stations would probably not operate so directly in favor of the dealer-operated station as it would in favor of the chain marketer. Would the dealer benefit by having the door opened by law for rapid expansion of this form of marketing?

Although Amoco opposes H.R. 6722, we believe that there are definite constructive approaches that the Small Business Committee could take that would materially improve the position of the dealer.

Among these approaches, the most important and directly relevant would be crude and product decontrol. Decontrol would alleviate problems by permitting access to product volumes at new and improved stations.

This would shift product to where the demand actually is—rather than where it was at some time in the past as reflected in rigid base periods. In so doing, it would eliminate the anomolous situations in which we see gas lines in Florida and California while product inventories are at record levels nationwide.

It would also eliminate the need for special treatment for certain areas such as that recently granted by the DOE to allocate gasoline from other parts of the country to the District of Columbia if gas lines ever develop here.

Secondly, the Committee could defer further consideration of H.R. 6722 until the results of Title III of the Petroleum Marketing Practices Act are complete. The first part of that study has been completed. It indicates that there is no predatory pricing at company-operated stations, and there is no mass movement of major refiners into "company stores."

We are confident that the second and final part will show definitively that there is no need for such legislation. The PMPA is now law, and should be given a chance to work. Suggest monitoring the results of PMPA under a decontrolled atmosphere before considering further legislation.

By way of conclusion, we would like to note that petroleum marketing is an extremely complex business. On the seller's side, it consists of a large number of categories ranging from majors to small and independent refiners, to chain marketers, to jobbers and dealers; a wide variety of facilities ranging from huge car-care centers to self-service facilities and rural stores with a few pumps outside.

On the buyer's side, there are also a wide variety of needs ranging from those who prefer the image and service of a major branded full-service station, to those who prefer self-service, to those who will buy anywhere, solely on the basis of price. The vast majority of the people involved as buyers and sellers are small business people and individual consumers.

This proposed legislation, at best, might artificially and temporarily preserve the viability of a few dealers. It would do so at the expense of consumers. Less obviously, but equally importantly, it would do so at the expense of other small businesses such as the jobber and small refiner.

And worst, it could cause the decline of branded marketing. If it did so, it would be to the detriment of the very segment of the business you seek to protect, the dealer.

Amoco urges you to seek less regulation, rather than more, to the benefit of all who are involved in the sale and purchase of petroleum products.

## Exhibit 3: Chevron U.S.A., Inc.

Chevron

**Chevron** U.S.A. Inc.
575 Market Street, San Francisco, CA 94105
Mail Address: P.O. Box 7643, San Francisco, CA 94120

D. L. Mulit
Vice-President
Marketing

June 11, 1980

The Honorable Berkley Bedell
Chairman, Subcommittee on Antitrust and Restraint
of Trade Activities Affecting Small Business
Small Business Committee
U.S. House of Representatives
B 363 Rayburn House Office Building
Washington D.C. 20515

The Honorable James H. Scheuer
Chairman, Subcommittee on Consumer Protection
and Finance
Interstate and Foreign Commerce Committee
U.S. House of Representatives
Room 3275 House Office Building, Annex 2
Washington D.C. 20515

Gentlemen:

Enclosed is the statement of Chevron U.S.A. in response to the "Small Business Motor Fuel Marketer Preservation Act", HR 6722. Chevron wishes to make this statement a part of the official record of the joint committees as they deliberate on the merits of the proposed legislation.

In addition, it has been brought to our attention that during the joint subcommittee hearings on HR 6722 of June 4, 1980, a group of Chevron Commission Agents from the State of Kentucky testified that they were particularly worried, after gasoline decontrol, about their ability to supply those customers who had been mandated to Chevron by the DOE. This concern is based on the allegation that Chevron was particularly aggressive in stating their intent to cease deliveries to their mandated customers when controls ended.

Please be advised that Chevron categorically denies this allegation. It is not our intention to drop, arbitrarily, any customer served by Chevron after controls are lifted. On the contrary, Chevron has released public statements on numerous occasions that we would continue for a reasonable length of time, to supply all our existing accounts including those mandated to us by the DOE, assuming, of course, they wished us to continue their supply.

If we can be of further assistance in these matters, please let us know.

Sincerely,

Enclosure

# STATEMENT OF CHEVRON U.S.A.

BEFORE THE

SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCE

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

AND

SUBCOMMITTEE ON ANTITRUST AND RESTRAINT OF TRADE

OF THE

COMMITTEE ON SMALL BUSINESS

U. S. HOUSE OF REPRESENTATIVES

## SMALL BUSINESS MOTOR FUEL MARKETER PRESERVATION ACT, H. R. 6722 AND RELATED BILLS

JUNE 11, 1980

## EXECUTIVE SUMMARY

H. R. 6722 is a far-reaching bill dealing with a whole series of fundamental marketing issues. These include provisions divorcing most refiners from their company-operated stations, restrictions on the use of company-operated stations by independent or small refiners, mandatory rack pricing, provisions permitting dealers to buy a refiner's product without the brand, provisions concerning alternate supply and a requirement that, if a refiner sells a service station, the sale must be made to the lessee dealer.

Chevron's assessment is that the bill's provisions would be detrimental to consumers, impede the ongoing process of the adjustment to economic change and, strange to say, would hurt, in significant ways, the interests of conventional, branded dealers.

Divorcement. Dealers claim that refiners have used predatory pricing to drive them from their stations and that refiners are taking over marketing with company stations. These arguments do not withstand analysis. According to Professors Areeda and Turner, "predation in any meaningful sense cannot exist unless there is a temporary sacrifice of net revenues in the expectation of greater future gains." The structure of the retail gasoline market is so diverse that no refiner could expect to drive everyone else from the market. Furthermore, every marketer knows that barriers to entry are low enough that new service stations most certainly would enter the market and provide more competition.

A recent Department of Justice report concluded that "genuine predation, i.e., pricing below short run marginal costs, is rare." Part I of the Title III Report found no evidence of predatory subsidization. According to the Report, two refiners with high cost company-operated stations were charging the highest prices on the street and the average dealer is selling more gasoline now than he did before. These facts are inconsistent with a claim of predation.

In support of the claim that refiners are taking over marketing, dealers say that 100,000 dealers have gone out of business and that 2,800 refiner stations have opened. It strains credulity to suggest that these company-operated stations could take over the business of 100,000 dealers.

The claimed takeover is a myth. There has been substantial growth by private brand outlets, such as convenience stores and mass merchandisers, and a dramatic spurt in the number of stations supplied by jobbers (branded and unbranded). In response to consumer demand, there has been a shift away from conventional stations (lessee dealers, company stations and open dealers) to gas and go type operations. To put the matter in perspective, one must recognize that gasoline sales by the 20 largest refiners at company-operated stations amounted to only 11% of the market in 1978-79.

Dealer Earnings. While dealers are somewhat reticent on the subject of earnings, the available published reports show that many dealers are doing well. William Ligon, the executive director of one dealer group, has stated:

> "You can figure that a good dealer who knows how to handle his business and his money will net about $1 a year for each gallon of his monthly volume. In other words, an 80,000 gal. per month dealer ought to be netting about $80,000 annually" (National Petroleum News, May 1980, p. 67).

Chevron is glad that dealers are doing well because it relies almost exclusively on dealers. Consequently, Chevron continues to be mystified by the strident charges of dealer organizations that refiners are attempting to put dealers out of business.

The Antitrust Division of the Department of Justice has opposed divorcement legislation because it would be "highly inequitable and seriously anticompetitive." John Shenefield, formerly in charge of this Division, concluded:

> "There is, however, substantial reason to believe that such legislation might be perceived by independent dealers as an effective means of eliminating part of the competitive threat posed by the recent trend towards gas-and-go operations."

And Professor Allvine concluded in September 1978:

> "[M]arketing divorcement will reduce the growth of gasoline convenience store operations which is winning increasing public acceptance. Marketing divorcement is clearly not in the public interest."

Divorcement legislation would hit consumers hard in the pocketbook. Prof. Mitchell estimated that such legislation would cost Michigan consumers $10 million a year. DOE's Office of Competition has stated that "complete foreclosure of gasoline purchases at refiner-company stations could have conceivably increased the New York consumer's bill more than $1.5 million for the single month of July 1979."

Rack Pricing. H. R. 6722 would force any marketer who performs a true jobber function to go out of business. One of the principal matters about which dealers complain is that increase in the number of jobber salaried-operated stations. What the proponents of the bill fail to realize is that the jobbers, faced with mandatory rack pricing, would, as a matter of survival, be encouraged to integrate forward into retail marketing. Would this help dealers?

Brand Surcharge; Alternate Supply. We are concerned that the breadth of the alternate supply provision and the failure of the bill to consider the practical problems involved will, along with the brand surcharge provision, lead to the demise of brand marketing. If a dealer follows the practice of putting different products in his service station tanks at different times, there will be no end of problems. Contamination can occur unless tanks are flushed out properly. Consumer deception and the long-condemned practice of "passing off" will occur unless it is made very clear to the consumer that unbranded or commingled products sold at the station are not supplied by the brand-name refiner. There is an element of consumer deception in any event if a motorist drives into a station and finds that brand-name products are not available or that they are available only in limited amounts or in certain grades.

If commingling becomes an established practice, a refiner would need to institute measures for sampling and testing products sold under its brand to be sure that its trademark rights have not been violated. Without testing, there would be no way to be sure. Administering such a program for all dealers supplied would be expensive, time-consuming and would tend to irritate dealers whenever their tanks were checked.

If brand marketing ends, the conventional dealer will be seriously hurt because he relies on the assurance of high quality products and services which the brand gives. The effect of the bill would be to help the large private brand operator who currently faces substantial competition from the branded lessee dealer offering a full range of products and services.

Sales to Individual Dealers. The "right of first refusal" contemplated by the bill is no more than a thinly disguised attempt to require refiners, who wish to sell their stations, to do so on a fire sale basis. There is nothing fair about either the concept or the procedure. First, the refiner makes an offer. Then the dealer makes a counteroffer. If the refiner does not like the counteroffer submitted by the dealer, he is mandated to sell the property at an appraised price to the dealer leasing the premises. A fair procedure already exists under the Petroleum Marketing Practices Act and this would be repealed. In many communities, land prices have risen substantially. H. R. 6722 would not only prevent the owner of the station site from selling the property at its real market value but would prevent the land from being employed for its highest and best use.

DOE Regulations. The regulations have tended to stifle the conventional dealer's growth and, at the same time, either require or encourage stiffer price competition from competing outlets. DOE's response to the problem was not to revise its regulations so as to permit growth but to grant pricing relief in the form of higher margins. This enabled a conventional dealer to make more profit from a given volume of sales. But, was this the right thing to do? If dealers had not been placed in such an adverse competitive position by the regulations, it is highly unlikely that margin relief would have been necessary. Moreover, the whole tortuous process of patching the regulations to solve another problem created by the regulations has resulted in higher prices for consumers.

One way to spread a fixed cost like rent is to increase volume. But the DOE regulations have made it almost impossible for a service station dealer to obtain an increased allocation. One DOE economist testified on May 8, 1980, as follows:

> "It would appear that over the last seven years some things have changed in retail marketing and it may appear there has been a movement to higher volume outlets.
>
> "The biggest problem that a lessee dealer has is that he is incapable of moving to a higher volume outlet. A refiner may feel that a lessee dealer is the way to market gasoline

through high volume outlets.

> "But the regulations prohibit him from making an agreement."

The Antitrust Division of the Department of Justice has concluded that in solving the problems of the petroleum industry "the 'regulatory reflex' is precisely the wrong response."

While recognizing that regulatory solutions are more dramatic politically, Mr. Shenefield, speaking for the Antitrust Division, is convinced that energy problems must be resolved by allowing competition to work:

> "The problem with the marketplace, of course, is that it acts subtly. There is no dramatic freeze on prices, no dynamic redirection of supply. To the poor suffering consumers or their elected or appointed representives who must suffer their complaints, there is too little solace in the prescription: let the marketplace have a chance to work. But that, however, is precisely what we must do."

Recommendations. Chevron strongly believes that further study of the basic policy issues is urgently needed. The DOE regulations have been tried and found wanting. A similar fate may befall other legislative approaches unless the fundamental issues are considered before any new legislation is drafted. We recommend that Congress first undertake a detailed study of the effect of the current DOE regulations on competition in the marketplace and then undertake a review of the underlying policy judgments made in the antitrust laws and the body of case law interpreting them. We must avoid at all costs legislation like the statutory and regulatory programs enacted in response to the Great Depression. As Mr. Shenefield stated:

> "* * * The economic conditions that produced these schemes have long been extinct, and we now know that the assumptions about the failure of competition were simply wrong. But their regulatory progeny are still with us."

Chevron believes that every type of business operation -- small or large -- has its own unique contribution to make. No one segment of the economy should receive

best copy available

favored treatment. As the Department of Justice has stated:

> "* * * A policy of extending undue competitive advantages to small businesses -- or stated somewhat differently, of imposing competitive disadvantages on larger businesses -- would be contrary to the public interest and ultimately would be a disservice to small business itself. Such a policy would undermine a cherished right of small business: the right to grow and prosper to the fullest extent of its capabilities and potential, unhindered by anticompetitive forces. We believe that the success of any business, large or small, should be determined by its ability to produce the quality of goods and services its customers want, at the lowest possible prices."

The consumer and the Nation as a whole prosper only if laws are enacted within the framework of a truly competitive economy.

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## Introduction

Chevron U.S.A., an integrated refiner, is most appreciative of the opportunity to discuss H. R. 6722. This bill, which is usually referred to as a divorcement bill, deals not only with this subject but with a whole series of fundamental marketing issues. These include provisions divorcing most refiners from their company-operated stations, restrictions on the use of company-operated stations by independent or small refiners, mandatory rack pricing, provisions permitting dealers to buy a refiner's product without the brand, provisions concerning alternate supply and a requirement that, if a refiner sells a service station, the sale must be made to the dealer occupying the premises.

H. R. 6722 is a far-reaching bill. In considering its provisions, we think that a better understanding is needed of economic developments, the regulatory environment and how competition functions in the petroleum industry. Our assessment is that the bill's provisions would be detrimental to consumers, impede the ongoing process of adjustment to economic change and, strange to say, would hurt, in significant ways, the interests of conventional, branded dealers, even though the evident purpose of the bill's proponents is to protect this class of trade.

### A. Economic and Regulatory Background

It is an understatement to say that petroleum marketing for the past seven or eight years has been chaotic. Before the Oil Embargo petroleum marketing was oriented primarily toward full-service, e.g., courtesy service, lubrication, engine tune-up and a full line of TBA products. Thereafter, rising costs for crude oil and for all products refined from it brought about profound economic change. With the shortage and high prices, consumers sought the lowest price products available.

Marketing strategies changed rapidly to meet consumer demand. Among them were the use of self-service pumpers, both branded and unbranded, and the placement of gasoline pumps in front of foodstores, motels and department stores.* Major refiners introduced the concept of split island marketing where courtesy service could be obtained at some pump blocks and self-service at others.

The proponents of H. R. 6722 suggest that the problems experienced by branded dealers during the period following the Oil Embargo were caused by their suppliers. This is perhaps a natural human reaction, but there is little or no truth in it. The rapid changes in marketing methods were initiated as a response to the demands of consumers. In our economy the consumer decides which marketing methods will succeed, which will do reasonably well and which will fail. A recent analysis by the Department of Justice makes the point:

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* Many of these strategies were already in existence, but after the shortage they were introduced at an ever increasing rate.

> "The basic force in changing the structure of the American marketplace is the consumer. It is the consumer who decides the type of retail establishment with which he or she wishes to deal. The consumer makes the choice as to whether he or she wishes the personalized service and convenience of a small establishment, providing special goods with special know-how, or the lower prices, relatively less service, and greater inconvenience of a larger store. * * *[I]n the highly dynamic distribution sector, there are many reasons why some businessmen tail and others succeed. New types of establishments arise * * * and changes in the overall economic picture may make the public more or less willing to pay for the ambience of a service-oriented establishment" (U. S. Dept. of Justice Report on the Robinson-Patman Act (1977), pp. 254-255).

Regulations of DOE and its predecessors compounded the problems experienced by all marketers and particularly by branded dealers. A dealer who had flown a supplier's flag for twenty years could not get an increased allocation, while a jobber could put in a new station nearby with an allocation which, for example, was twice as high. Aided by the regulatory process, jobbers (and dealers supplied by them) made substantial gains in volume, while many branded dealers found their volume slipping. On the pricing side, DOE regulations, for a time, required company-operated stations to sell gasoline at prices anywhere from 8¢ to 20¢ below the prices charged by competing dealers. It is easy to see why dealers might regard these prices as "predatory", but the fault was with DOE, not suppliers who were mandated to charge lower prices.

The present bill, H. R. 6722, can only be assessed in the light of this economic and regulatory background. Even with the drastic changes in petroleum marketing, some dealers prospered and are doing better now than ever before. Some marginal dealers have closed. Often this has occurred despite the efforts of their suppliers to keep them in business. Most major refiners, like Chevron, rely primarily on dealers to sell their products. If one of our dealers fail, we regard it as a defeat for us.

## B. Provisions Concerning Divorcement

H. R. 6722 would make it unlawful "* * * for any refiner, other than an independent refiner or a small refiner, to operate any motor fuel service station in the United States." This type of proposal is usually referred to as "divorcement" as distinguished from "divestiture".* Proponents of divorcement legislation assert that "structural change" is needed primarily for two reasons: These are claimed predatory pricing by integrated refiners at company-operated stations and the contention that independent service station dealers are dwindling in numbers because of the expansion of refiner company-operated stations. These arguments have been repeated often enough that they need to be carefully examined.

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* The term "divestiture", as applied to retail marketing, usually refers to a requirement whereby suppliers are required to sell all interests they have in service stations.

1. Predatory Pricing

There is a great deal of confusion concerning what is meant by "predatory pricing". In a legal sense it usually means selling below cost with the intent to injure competition. Such conduct can be part of a monopolization or attempted monopolization case. In damage actions, there must also be proof that competition has in fact been injured. Predatory pricing, if found to exist, is unlawful under existing state and Federal statutes.*

The concept of unlawful predatory pricing must be carefully distinguished from aggressive competition designed to win customers. The core of our antitrust policy is that firms should be motivated to compete and to do better than their rivals. Professors Areeda and Turner of the Harvard Law School give clear recognition to this distinction in discussing attempted monopolization under the Sherman Act:

> "When antitrust policy exhorts firms to compete, it necessarily supports their desires

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* E.g. § 2 of the Sherman Act (monopolization; attempted monopolization); § 2 of the Clayton Act as amended by the Robinson-Patman Act (territorial price discrimination); § 5 of the Federal Trade Commission Act (unfair methods of competition); § 3 of the Robinson-Patman Act (a criminal prohibition against sales at unreasonably low prices for the purpose of destroying competition); and many sales below cost statutes in individual states.

> to prevail over competitors. To be sure, we recognize that the unusually successful competitor might obtain * * * a monopoly, and such a monopoly, if it persists, might be condemned as such. But any such condemnation would rest on the hope of restoring feasible competition, and not on the desire to punish the defendant's intent to win in the marketplace. The intent to prevail by legitimate means is one that antitrust law favors, not condemns * * *" (Areeda and Turner, Antitrust Law (1978) Vol. III, pp. 314-315).

This fundamental distinction between predatory pricing and aggressive competition has long been a cornerstone of antitrust policy and, indeed, the Nation's economic well-being. Any tinkering here, as a matter of general legislative policy, could lead our economy into an era of lower productivity, higher prices and a general decline in everyone's standard of living.

According to Areeda and Turner, "predation in any meaningful sense cannot exist unless there is a temporary sacrifice of net revenues in the expectation of greater future gains." They describe the nature of a predatory campaign and the preconditions for its success as follows:

> "* * * [T]he classically feared case of predation has been the deliberate sacrifice of present revenues for the purpose of driving rivals out of the market and then recouping the losses through higher profits earned in the absence of competition. Thus, predatory pricing would make little economic sense to a potential predator unless he had (1) greater financial staying power than his rival, and (2) a very substantial prospect that the losses he incurs in the predatory campaign will be exceeded by the profits to be earned after his rivals have been destroyed.

> "As for the first prerequisite, it should, of course, be recognized that predation cannot be successful, and therefore is unlikely to occur, when the predator's rivals possess resources comparable to his own. Even when an alleged predator has greater staying power, however, attention must also be given to the second prerequisite, which is less likely to occur. * * * Moreover, a firm can anticipate monopoly profits for only so long as its monopoly prices do not attract new entrv. Losses incurred through predation could be regained in markets with very high barriers to entry. In many markets, however, and especially in those having a number of small rivals, entry barriers may be non-existent or at least too low to preclude entry. * * * The prospects of an adequate future payoff, therefore, will seldom be sufficient to motivate predation. Indeed, proven cases of predatory pricing have been extremely rare" (Areeda and Turner, Antitrust Law (1978) Vol. III, pp. 151-152).

In summary, the essential preconditions for successful predation are:

1. There must be no competing marketers with comparable staying power.
2. There must not be new entry; otherwise, the predator cannot reap monopoly profits.

The structure of the retail gasoline market is extremely diverse. There are refiners whose primary business is supplying dealers, refiners who rely mostly on company stations, chain retailers with many individual outlets and many jobbers who sell either to dealers or direct to the consumer from salary-operated stations.

With this structure, the various dealers competing in a market, who are usually backed by the resources of a powerful supplier, could not be forced out by predatory prices charged at a refiner's company-operated stations. Other refiners and jobbers would follow counterstrategies to protect the interest they have in retaining the custom of service stations they supply.

Even if one indulges the assumption that a predatory campaign could somehow eliminate rival service station dealers from a market, are the barriers to entry high enough to prevent other competitors from entering? The service station business is characterized by the existence of many rival sellers. Although construction costs for new stations have increased, the marketing of petroleum products has always been and remains a business characterized by relative ease of entry. If profits were thought to be high in a given market, new entries would most certainly occur. One reason why this is true is that private brand marketers represent a very important factor in most markets. Over the years, these marketers have competed successfully on the basis of price. Indeed, they were in a better position than other marketers to provide products on a lower price, no frills basis in the aftermath of the Oil Embargo. It should come as no surprise that these marketers have made substantial gains in market share during the past few years. Significantly, this has occurred during the very time when major integrated oil companies are supposed to have been engaged in a predatory campaign to drive dealers out of the market.

Part I of the recent Title III Report* found no evidence of predatory subsidization. The first market studied in depth was Ft. Wayne, Indiana, where dealers claimed that integrated refiners had engaged in unlawful practices. The Title III Report found that two refiners who had high cost company-operated stations were charging the highest prices on the street and losing market share (Title III Report, pp. 75, 88). This is what one would expect and certainly provides no basis for a claim of predation. The Title III Report also found that the average dealer is selling more gasoline now than he did before. The Report concluded that this was also inconsistent with the notion that integrated refiners have been engaged in a predatory campaign to drive dealers from the market (Title III Report, pp. 44-46).

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* The State of Competition In Gasoline Marketing (1980), by James B. Delaney and Robert N. Fenili (prepared under the direction of William C. Lane, Jr.).

A recent Department of Justice Report concluded that "* * * genuine predation, i.e., pricing below short-run marginal costs, is rare" (United States Department of Justice Report on the Robinson-Patman Act (1977), p. 164). According to the Report:

> "This conclusion was based on empirical studies by several researchers of the actual court records and evidence in a large number of antitrust cases in which the defendants were found guilty of monopolization, and in which predatory pricing practices had been alleged. In those few cases where research showed that the alleged 'predation' involved pricing below fully allocated costs, further analysis found that the 'predation' which did occur did not harm competition in any meaningful sense" (pp. 164-165).

2. The Takeover Myth

Dealer representatives claim that the company-operated stations of integrated refiners are taking over marketing. According to them, immediate action is needed to preserve the "structure" of the gasoline industry:

> "The takeover of marketing is in an advancing stage. Unless stopped now, the result will be irreparable damage to the structure of competition in the gasoline industry" (Allvine Report*, p. 1).
>
> "We are either going to have a highly competitive gasoline industry or else one dominated by a few large integrated petroleum companies" (Allvine Report, p. 63).

To support this dire prediction, dealer representatives assert that during the period from May 1972 to May 1979 "more than 100,000 dealers were being eliminated" while the number of refiner company stations increased by approximately 2800 outlets (Allvine Report, p. 3).

Even if these statistics were correct -- and they are not -- the inference of a "takeover" by refiner company-operated stations is plainly wrong. It strains credulity to suggest that 2800 refiner company-operated stations -- no matter how efficient or what volumes are sold -- could possibly sell all the gasoline and other products formerly sold by 100,000 dealers. Any marketing man can tell you that it could not be done.

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* "The Case for Legislative Relief from the Impending Destruction of Small Business and Competition in the Gasoline Industry" (Rev. Ed. 1980) by Allvine, Houston and Phillips.

Moreover, the figures used in the Allvine report do not take into account the active developments which have occurred in petroleum marketing: The growth of private brand outlets such as convenience stores and stations operated by mass merchandisers (usually department stores) and the dramatic spurt in the number of stations supplied by jobbers.

The available statistics show that during the period from 1972 to 1978 refiner sales to unbranded markets increased from 11.9% to 17.4% of total gasoline sales (Title III Report, Table 2-2). This represents a large volume of product and a good part of this volume has found its way into outlets operated by convenience stores and mass merchandisers. We estimate that 10 to 15,000 convenience stores alone opened during the last ten years. The rent and other fixed costs per gallon for combination-type outlets are much less because these costs are split between two different businesses. This, of course, means a greater margin of profit on gasoline. Given the challenges facing petroleum marketing, the growth of outlets of this type was almost inevitable.

We also know that jobbers of all types expanded their operations substantially during the same period: Branded jobbers alone increased their share of the market from 21% in 1972 to 27% in 1978 (Title III Report, Table 2-2). The Title III Report points out that it is misleading to consider dealer closures without considering the growth in jobber-supplied stations:

> "* * * A recent DOE study indicated that the number of jobber-supplied stations for several refiners had increased from 54 to 61 percent. If this situation is an industry-wide phenomenon, the decline in the percent of sales supplied directly to dealers by refiners would be misleading if taken by itself. This decline should be considered with the increase in the percent of sales to branded jobbers supplied by refiners" (Title III Report, p. 33).

To put the matter in perspective, one must recognize that total gasoline sales by the 28 largest refiners at company-operated stations amounted to only 11% of the market in 1978-79. Total sales by those refiners to dealers, branded jobbers and unbranded resellers came to 83.3% of all sales. The remaining 5.7% of the gasoline sold represented direct sales by refiners to end users, such as farmers and commercial and industrial accounts (Title III Report, Table 2-1). This overall picture hardly shows a "takeover" by large refiners. The Title III Report concludes succinctly:

> "The hypothesis that the major refiners channeled substantial quantities of gasoline away from their dealer network into their company stations can be rejected" (Title III Report, p. 51).

As noted earlier, economic change has been the primary reason for upheaval in the service station business. With a shortage environment, fewer stations were put up. With higher costs for everything, the growth of large pumpers, mass merchandisers and jobber-supplied outlets was a natural response to the consumer's demand for lower priced gasoline on a no frills basis. The full-service station was hardest hit by these developments. The impact of economic change was felt not only by the conventional branded lessee dealer but by the conventional company-operated station and the conventional open dealer. The Title III Report, in discussing market share data and the reductions in the number of conventional stations, concluded that the changed economics of petroleum marketing has resulted in a trend towards higher volume units:

> "* * * [T]he trend seems to be more consistent with the viewpoint that changes in the marketplace have shifted the economics of marketing gasoline away from low volume outlets toward higher volume outlets. To the extent that other dealers left the industry, their gasoline appears to have been rechanneled to the remaining dealers, at least for the eight largest companies" (Title III Report, p. 46).

### 3. Dealer Earnings

While some conventional type operations have not fared well, many dealers have adapted to changed economic circumstances and are making good profits. Dealers, quite naturally, are somewhat reticent on this subject but the available published reports show that incomes in the $50,000 range are "relatively commonplace" and some dealers make much more.

A recent Baltimore Sun article states:

> "Many neighborhood service stations, too, are raking in more money.
>
> "Benefiting from an increase in the markup they can add to the price of a gallon of gasoline, and from reduced operating expenses due mainly to shorter hours, some station owners have doubled their earnings in the last year" (emphasis added).

The article gives the following example of a dealer who expects to double his business:

> "James Grady, who left a $60,000-a-year job last summer as regional public affairs officer to take over a station on North Charles street, said the station's service work has doubled the past year, but said this was due to major investments in new equipment - a tow truck, an engine analysis machine and front-end alignment equipment. 'I should double my business', he concluded."

The article indicates that gas and go stations have done particularly well:

> "There is general agreement within the industry that the stations that have benefited the most from the disruption of the gasoline market are the 'gas and go' self-service outlets."

The same article states that some conventional stations are also doing well:

> "Donald R. Healy, a Baltimore-Washington area district manager for Shell Oil Company, declined to discuss the profitability of individual stations but said he knew of many that were in the $200,000-a-year range. He said they were not the gas-and-go stations but high volume conventional stations" (emphasis added).

The article also notes that there are long waiting lists for people who want to get into the service station business:

> "As another indication of how well service stations are doing at this time, Mr. Healy said, 'Whenever we have a station open for lease, within a few hours there's a line a mile long outside our office'" (Baltimore Sun, March 24, 1980).

William Ligon, who testified before the Subcommittee, has acknowledged that profits are good:

> "* * * Bill Ligon, executive director of a Texas service station group, says a good average in metropolitan areas of his state is 60,000 to 65,000 gal. now. He also says such an average dealer probably runs $200 to $250 a day in his service bays now, up from $100 to $115 daily a few years ago.
>
> "* * * I know some dealers who are netting $20,000 per month now and some who are taking home $10,000 a month. You can figure that a good dealer who knows how to handle his business and his money will net

> about $1 a year for each gallon of his monthly volume. In other words, an 80,000 gal. month dealer ought to be netting about $80,000 annually" (National Petroleum News, May 1980, p. 67).

In the same report, a refiner states:

> "'Most of [our] dealers have been in business for 10 or more years in the same location. Many are second- and third-generation dealers who have large investments and large businesses. And dealer profits of $50,000 a year and more are relatively commonplace'" (emphasis added) (National Petroleum News, May 1980, p. 68).

Chevron is glad that dealers are doing well because it relies almost exclusively on dealers and, if they are successful, Chevron is successful. In 1966, Chevron had 1,144 company-operated stations but by 1972 this number had decreased to about 500. Currently, we have only 100 company-operated stations. Instead of relying on company-operated stations, we sell gasoline to approximately 13,500 Chevron branded dealers.* In most instances, we believe this is the most efficient way to market gasoline.

In view of the importance of successful dealers to Chevron and other major refiners, we continue to be mystified by the strident charges of dealer organizations that refiners are attempting to put dealers out of business. Chevron puts a lot of effort into choosing a good site. It then builds a station according to the latest design concepts. Finally, we turn over the station to a trained dealer on a turnkey basis. After doing all this and in light of the investment of time and capital, it would be totally self-defeating for Chevron to open a company-operated station next door to drive our dealer out of business. We have never followed such a practice and we have absolutely no business incentive to do so.

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* There are roughly 2,000 more outlets selling under the Chevron brand if outlets supplied by Chevron branded jobbers are included in the service station count.

4. Impact on Competition and Consumers

The trend for major refiners is to make less use of company-operated stations. The bill's impact would fall most heavily on medium-sized refiners who make the greatest use of this marketing method. The bill would eliminate entirely the vigorous price competition of company stations operated by these smaller refiners. This lessened competition would soon translate itself into higher prices for consumers.

With supply and demand more closely in balance and the emphasis on conservation of motor fuel, it may be less likely than it once was for refiners -- both large and small -- to enter new markets. Indeed, because of extended supply lines, some refiners may question whether it is desirable to stay in markets where they currently operate.* When attempting to enter a new market or to hold on in the face of intense competition in an existing market, a refiner often finds that a company-operated station is very useful in attracting customers to the company's products and services.

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* At the present time, Chevron plans to supply all markets where it is currently selling gasoline.

The problem is particularly acute in entering a new market where a supplier must convince consumers to change their customary buying habits. Entering a new market is always difficult. Many refiners may decide that the risks are too great if they are precluded from using company-operated stations. In this connection, it is of some significance that, once a foothold is established with company-operated stations, company locations are often turned over to dealer operation.

The effect of the bill, however, would be to prevent this type of competitive activity by encouraging suppliers to stay where they are or, in some instances, to allow themselves to be pushed out of markets where they currently operate. These results are totally at odds with the underlying objectives of the antitrust laws.

The broader implications of divorcement legislation have been considered by the Antitrust Division of the Department of Justice. John Shenefield, who was formerly in charge of this Division, concluded that this type of legislation would be "highly inequitable and seriously anticompetitive." In his view, divorcement would unjustifiably protect conventional dealers from more efficient gas-and-go operations. As a result, consumers would be forced to pay higher prices:

> "* * * As I have indicated, the available evidence does not indicate that divorcement legislation is needed to protect independent dealers from the allegedly anticompetitive actions of large integrated oil companies. There is, however, substantial reason to believe that such legislation might be perceived by independent dealers as an effective means of eliminating part of the competitive threat posed by the recent trend towards gas-and-go operations. Experience indicates that the increased popularity of gas-and-go operations has primarily been at the expense of independent service stations and that a large number of gas-and-go operations are directly operated by both independent and integrated refiners. Thus, a ban on the ownership or operation of retail marketing outlets by all refiners would significantly reduce the competitive threat of gas-and-go operations.*

One of Mr. Shenefield's concerns has been that divorcement legislation will end up protecting individual competitors rather than the competitive process. The ultimate effect of this would be to subordinate the interests of consumers:

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* Testimony of John H. Shenefield Concerning Retail Marketing Divorcement and Divestiture Legislation, January 18, 1979, p. 15).

> "As I stated at the beginning of my remarks, my purpose in appearing before this Committee is to advance the interest of consumers in having a competitively sound petroleum industry and low prices for refined products. *While government regulation often fosters competition, great care must be taken to assure that it does not inhibit competition by placing the interests of individual competitors above the interests of all consumers* (emphasis added)."*

Professor Allvine, who addressed jobbers on the subject of marketing divorcement in September 1978, reached the same conclusion, namely, that divorcement legislation is *protectionist* in character and is therefore contrary to the public interest:

> "*What is marketing divorcement legislation of the Maryland variety really all about? To a very large extent it is class legislation designed to protect branded dealers from changes occurring in the marketplace.* We all know that there are far too many major brand stations to efficiently serve the needs of the public. Dealer organizations are attempting to slow the badly needed attrition of major brand service stations. *Furthermore, marketing divorcement will reduce the growth of gasoline-convenience store operations which is winning increasing public acceptance. Marketing divorcement is clearly not in the public interest*" (emphasis added) (Marketing Divorcement and the Private Brand Jobber, September 19, 1978, by Fred C. Allvine, p. 2)."**

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* Testimony of John H. Shenefield Concerning Retail Marketing Divorcement and Divestiture Legislation, January 18, 1979, pp. 16.

** The contrast between these views and those expressed by Professor Allvine a little more than a year later is startling. See "*The Case for Legislative Relief from the Impending Destruction of Small Business and Competition in the Gasoline Industry*" (Rev.Ed. 1980) by Allvine, Houston and Phillips.

Indeed Congressional divorcement legislation could cause consumers to pay millions of dollars a year more for gasoline. Professor Mitchell, an economist who appeared before the Subcommittee on June 4, 1980, testified that in Michigan employee operated-stations charge lower prices than those of independent dealers. If company-operated stations in Michigan become independent dealerships, he estimated that the consumer would pay an additional $10 million a year in Michigan alone. (Statement of Professor Edward J. Mitchell, p. 27).

A similar estimate for New York has been made by DOE's Office of Competition. In that state the refiners who are using company-operated stations the most "market gasoline primarily through self-serve, high volume, low price retail outlets" (*Trends*,* p. 14). The price differential at these stations "routinely approaches 2-3¢ *below* those charged by branded dealers at their self-serve islands" (*Trends*, p. 14). The Office of Competition concludes:

> "* * * Assuming that consumers were foreclosed from purchasing gasoline at Group NY-3 outlets for the month of July 1979 and do not quantity-adjust, their gasoline bill would increase approximately $500,000-$750,000. This also assumes that dealers do not *raise* their retail prices once their low price competition has been eliminated. To the extent that other refiner-operated outlets use the same pricing

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* "*Trends in Company Stores, A Preliminary Analysis*" by Robert N. Fenili and James B. Delaney (1979).

> strategy in times of normal product supply, a complete foreclosure of gasoline purchases at refiner-company stations could have conceivably increased the New York consumer's gasoline bill more than $1.5 million for the *single* month of July 1979" (emphasis in original) (Trends*, pp. 14-15).

The figure of $1.5 million for the month of July might mean an annual increase of $10 to $15 million in the cost of gasoline to New York consumers. (An annual figure of $18 million would be too high because July is a high consumption month for gasoline.)

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* "*Trends in Company Stores, A Preliminary Analysis*" by *Robert N. Fenili and James B. Delaney* (1979).

### C. Provisions Concerning Restricted Growth

Under the bill, independent refiners or small refiners,* may operate company stations, but are subject to restrictions on their growth. The bill's primary method for checking growth is the establishment of a refiner's "sales ratio" for each state where it sells product. By this is meant the ratio determined by dividing a refiner's total annual gasoline sales in a state into a refiner's total company-operated sales there.

Under the bill, each and every independent or small refiner is restricted to the "sales ratio" it had for a given state in calendar year 1978.** What this means is that, despite any change in economic circumstances

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* Those which produce directly, or obtain from "related persons", under 30% of the crude oil they use or whose refineries have a capacity of 175,000 barrels per day or less.

** There is another provision further restricting the growth of independent or small refiners. Under this test, the refiner's annual volume at company-operated stations in a particular state must not exceed (a) his 1978 sales volume at such stations in the state in question plus (b) the excess of the refiner's current annual motor fuel sales for the state as a whole, less the refiner's 1978 total for the state, multiplied by the lesser of two percentages: one-half or the refiner's sales ratio in 1978 for the state.

(either growth or loss of sales), the balance a refiner happened to achieve in 1978 between company-operated and total sales in a particular state can never move in the direction of a greater proportion of company-operated sales.

Most of the arguments concerning divorcement apply with equal force to the "sales ratio" provisions. Very briefly, we see the following additional problems:

-- The sales ratio will apply automatically without any regard to changes that have occurred in the refiner's business. If for some reason a refiner's total sales in a state are down, but his company-operated sales have held steady, company-operated sales nonetheless must be reduced to comply with the sales ratio requirement.

-- If a marketer cannot grow by serving new customers, he probably will attempt to make more money on his existing volume by raising prices. Since all small or independent refiners will be affected in the same way, the general effect on the economy will be the same as if they agreed to fix prices.

-- The restrictions probably would help major refiners who are dependent on sales made by conventional dealers. Mr. Shenefield, in commenting generally on divorcement legislation, remarked:

> "In fact, ultimately such legislation could benefit large integrated petroleum companies by disrupting the activities of one of their most efficient independent rivals" (Testimony of John H. Shenefield Concerning Retail Marketing Divorcement and Divestiture Legislation (January 18, 1979), p. 14).

Finally, we understand that one of the major concerns expressed by members of the Subcommittee is the welfare of the dealer as a member of the small business community. Given this concern, we do not understand why one group of small businessmen should be favored over another.

D. Requirement of Rack Pricing

The bill provides that it is unlawful for a refiner "* * * to sell motor fuel at any time at any point of transfer at different prices for any basic unit* of motor fuel." Although the bill provides for a cost justification defense, there is no requirement that a price difference injure "competition" and no defense based on meeting in good faith the equally low price of a competitor.

According to the bill's sponsors, the rack pricing provision is based on "the model of the Robinson-Patman Act." A recent Department of Justice Report on that Act concluded that it was anticompetitive:

> "* * * Robinson-Patman really serves as 'fair trade' at the manufacturer level. By promoting 'pricing caution,' Robinson-Patman encourages the maintenance of uniform list prices in oligopolistic manufacturing industries. At the same time, by discouraging bargaining on part of the buyers, Robinson-Patman decreases the possibility that a retailer will receive a lower price, pass it on to the consumer, and thus initiate a competitive struggle in the retailing sector which will ultimately result in more efficient operation and lower prices for the consumer" (U. S. Department of Justice Report on the Robinson-Patman Act (1977) p. 257).

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* The bill defines "basic unit" as follows:

"(A) a dealer tankwagon or transport load;
(B) a railroad tank car load;
(C) a barge load; and
(D) a pipeline tender."

However, the rack pricing provision of the present bill would go much, much further by attempting to introduce complete price uniformity: Irrespective of the function performed in the marketplace, all customers buying in similar quantities are to be treated alike, e.g., refiners, dealers, jobbers, trucking companies, railroads, farmers and taxicab companies, to name only a few.

The Robinson-Patman Act stops short of this and provides that price discrimination is unlawful where its effect "may be substantially to lessen competition" between buyers or sellers. Moreover, a seller may protect himself against a price raid by a competitor by offering to meet in good faith (but not beat) the lower price.

The objective of total price uniformity is anti-consumer and in direct conflict with the objectives of the Sherman Act. Indeed, as pointed out many years ago, the meeting competition defense is the only means by which the conflict in policy between the Robinson-Patman and Sherman Acts can be resolved:

> "[A] seller's right to meet a competitor's prices by granting price differentials to some customers without reducing his prices to all must remain an essential qualification to any antiprice discrimination law. For a seller constrained by law to reduce prices to *some* only at the cost of reducing prices to *all* may well end by reducing them to *none*. As the Federal Trade Commission recently recommended to Congress, 'the right to meet a lower price which a competitor is offering to a customer, when this is done in good faith, is the essence of

> competitive economy.' Anything less, we think, would move the price discrimination statute into irreconcilable conflict with the Sherman Act" (emphasis in original) (Report of the Attorney General's National Committee to Study the Antitrust Laws (1955) p. 181).

A recent Maryland statute eliminated the meeting competition defense on sales of gasoline to service station dealers. Refiners and wholesalers were prohibited from granting "voluntary allowances" or competitive discounts to service station dealers who were faced with competitive price reductions in the immediate area. The Department of Justice, Antitrust Division, has expressed the view that this type of statute is a step in the wrong direction from the standpoint of our basic antitrust laws:

> "* * * While it is understandable that a state might, out of a sense of equity, seek to protect independent distributors from the competition of larger integrated firms, it is also reasonably clear that over the long run consumers will pay higher prices as a result. This might explain why, in upholding the constitutionality of this statute, the Supreme Court disavowed any endorsement of its economic wisdom" (Energy: Is Regulation the Answer Or the Problem? (August 8, 1978) by John H. Shenefield, Asst. Attorney General, Antitrust Division).

Moreover, a mandatory rack pricing system would give no recognition to the many valuable functions jobbers perform in petroleum marketing. These include transportation, invoicing, handling customer complaints, extending credit, the development of efficient service stations and the introduction of new marketing methods. Since the bill provides in substance that a dealer and jobber should pay the same price for gasoline, the jobber receives no compensation for any of these functions. To put it bluntly, the bill would force any marketer who performs a true jobber function to go out of business. Furthermore, the bill does not consider the economic consequences. One of the principal matters about which dealers complain is the increase in the number of jobber salary-operated stations. What the proponents of the bill fail to realize is that a jobber, faced with mandatory rack pricing, would, as a matter of survival, be encouraged to integrate forward into retail marketing. It seems doubtful whether the average dealer would welcome this development.

As noted earlier, the mandatory rack pricing system proposed by the bill would not stop with the relationship between dealers and jobbers but would attempt to bring about complete price uniformity in the marketplace. The proponents offer no reason why a taxicab company or a lumber company should receive the same price for gasoline that a dealer does. No one of them competes with any of the others. The antidiscrimination provisions of the Robinson-Patman Act are tempered by the requirement that an adverse effect on competition must be shown. Under that Act, a seller may establish different prices for customers who perform different functions in the economy.

This process cannot be carried out with mathematical exactitude but a functional discount does reflect, in a broad sense, what the economy is willing to pay for the product itself and the function which is performed. The present bill simply ignores the fact that different marketers perform different functions and that the person who performs a function should be paid for doing so. The bill, while conceived in a desire to do equity, would in reality bring about much unfairness.

Finally, we have grave doubts whether the monolithic pricing system contemplated by H. R. 6722 could work in practice. The bill requires price uniformity at "each point of transfer." Points of transfer would include refineries, terminals and many bulk storage facilities throughout the country. The bill also contemplates that different prices will be charged depending on the basic unit of delivery. In other words, different prices are appropriate depending on whether delivery is affected by "dealer tankwagon", "railroad tank car", "barge loading" or "pipeline tender".

The distribution system for gasoline is very complex. Gasoline refined in one part of the country may be exchanged with product in other areas. Both raw materials and finished products are often transported over a considerable distance. The industry is also very competitive. Consequently, the differentials between different methods of transportation and the differentials between transfer points in different geographic areas would be critical. To illustrate this, suppose that a refiner in Louisiana sells barge loads of product at a very low price to jobbers -- the refiner's only customers there who purchase by that method of delivery. Nothing in the bill would prevent these jobbers from taking the product to other areas and underselling all other resellers (dealers and jobbers) marketing there.

Competition is still strongly engrained in the economy and it probably could not be stopped from working completely unless an attempt were made to regulate every price that every refiner charges at every point of transfer for every method of delivery. If this were done, we would be back to a system of DOE regulations which most observers agree has not worked. In short, we believe that a mandatory rack pricing, even though enacted in a spirit of fairness, would result in another spate of regulations with all their rigidities and inequities.

### E. Provisions Concerning Brand Surcharge And Alternate Supply

The bill permits a refiner to charge "any person a uniform and reasonable surcharge" for use of the refiner's brand "and any services associated with such use." A closely-related provision states that "it shall be unlawful for any person to restrain, interfere with or in any way prevent the purchase from another, the storing or the selling of motor fuel by any dealer." The bill also provides that if a product is not supplied by the brand-name refiner "reasonable notice" of such fact must be given "at the point of sale to purchasers." In our view, while these provisions may seem relatively innocuous on the surface, their combined impact would lead to the serious weakening and ultimately to the end of brand marketing.

Under the brand surcharge provision, a refiner would be required to specify the additional amount which a dealer must pay for the use of the brand and any additional services that are associated with it. Although not stated expressly, implicit in the brand surcharge provision is the idea that the dealer should be free to choose whether he buys gasoline on a branded or unbranded basis. This idea is in direct conflict with the traditional freedom of a supplier to market his products and services under a brand name if he chooses to do so.

The effectiveness of the Chevron brand is increased immeasurably when all service stations we supply in a given market area carry the brand. There is a synergistic effect. If individual service stations had the option to buy unbranded and a large number of them exercised that option, this would undermine the brand and the trademark identification of our products.

Under the broad language of the bill, it would be unlawful for anyone to interfere with the right of the dealer to buy product from any source. This is coupled with the provision which requires that there will be "reasonable advance notice" to consumers of products that are not refined by the supplier.

The apparent intent of these provisions is to permit a branded dealer to fly the supplier's flag and to offer branded products on some occasions and unbranded products purchased from different sources at other times. The bill is silent on commingling as such, but presumably this practice would be permitted.

Chevron does not question the right of a dealer to purchase competing gasolines and other products resold at service stations. An agreement between refiner and dealer requiring the latter to forego competitive products would violate § 3 of the Clayton Act (preventing exclusive dealing agreements) and § 1 of the Sherman Act (which provides against unreasonable restraints of trade).

We are concerned that the breadth of the alternate supply provision and the failure of the bill to consider the practical problems involved will, along with the brand surcharge provision, lead to the demise of brand marketing. If a dealer follows the practice of putting different products in his service station tanks at different times, there will be no end of problems. Contamination can occur unless tanks are flushed out properly.* Consumer deception and the long-condemned practice of "passing off" will occur unless it is made very clear to the consumer that unbranded or commingled products sold at the station are not supplied by the brand-name refiner. There is an element of consumer deception in any event if a motorist drives into a station and finds that brand-name products are not available or that they are available only in limited amounts or in certain grades.

If commingling becomes an established practice, a refiner would need to institute measures for sampling and testing products sold under its brand to be sure that its trademark rights have not been violated. Without testing, there would be no way to be sure. Administering such a program for all dealers supplied would be expensive, time-consuming and would tend to irritate dealers whenever their tanks were checked.

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* Unleaded gasoline should never be placed in tanks which previously held leaded gasoline.

No matter what precautions were taken, it is almost a certainty that the customer would hold the brand-name supplier responsible for any dissatisfaction with the products or services received at the station.

The net effect, as we see it, is that the bill's provisions will have the ultimate effect of discouraging suppliers from engaging in brand marketing. The hassles and economic costs will probably not justify the return, to say nothing of the deterioration of the value of the brand as a symbol of quality.

If brand marketing ends, the conventional dealer will be seriously hurt because he relies on the assurance of high quality products and services which the brand gives. The effect of the bill would be to help the large private brand operator who currently faces substantial competition from the branded lessee dealer offering a full range of products and services.

The consumer will be hurt too because he will lose the option of patronizing stations where the quality of products sold is well known. Furthermore, refiners will have less incentive to do the research needed to improve their products. Here again the consumer will be the ultimate loser.

### F. Sales to Individual Dealers

The bill requires that if a refiner decides to sell its interest in a service station the dealer leasing the station must be offered a "right of first refusal". First, the refiner must give the dealer an exclusive 60-day option to accept the refiner's offer. During the 60-day period, the dealer may make a counteroffer. Within 30 days after the date of the counteroffer, the refiner must either agree to the dealer's counteroffer or submit a revised offer to sell the refiner's interest in the station to the dealer "at a price to be determined by an independent appraisal meeting the standards prescribed by the Commission."* The "right of first refusal" contemplated by the bill is no more than a thinly disguised attempt to require refiners, who wish to sell their stations, to do so on a fire sale basis. There is nothing fair about either the concept or the procedure.

Although the bill provides for what is euphemistically termed a "right of first refusal", there are no provisions at all for offers from third parties. If the refiner does not like the counteroffer submitted by the dealer, he is mandated to sell the property at an appraised price to the dealer leasing the premises. Under the bill's provisions, it would be totally unrealistic for a third party to make an offer. No potential buyer in his right mind would submit an offer for a service station with the knowledge that the dealer need only reject whatever counteroffer is made and wait for the Federal Trade Commission to award him the property at a fixed price.

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* The revised bill indicates that the Commission referred to is the Federal Trade Commission.

Moreover, a fair procedure already exists under the Petroleum Marketing Practices Act (PMPA), which was enacted only after a thorough consideration of the underlying policy issues and full participation in the legislative process by all segments of the petroleum industry. Under PMPA, if a refiner "in good faith and in the normal course of business" decides to sell a service station which is leased to a dealer, the refiner must make "a bona fide offer" to sell his interest in the property to the dealer (§ 102(b)(3)(D)). If the refiner has received an offer from a third party, the refiner must give the dealer, at no expense to him, a 45-day right of first refusal. In cases where the refiner decides to alter the premises, or to replace them, he is expressly prohibited from "converting the leased marketing premises to operation by employees or agents of the [refiner] for such [refiner's] own account" (§ 102(b)(3)(D)). In other words, the refiner, under existing law, cannot turn the leased premises into a company-operated station.

In a free economy the local service station must compete for available sites with other business operations such as banks, fast food outlets and office buildings. In many communities, land prices have risen substantially. The proposed bill would not only prevent the owner of the station site from selling the property at its real market value but would prevent the land from being employed for its highest and best use. Thus, this bill can only be regarded as "protectionist" legislation designed to promote the narrow interests of a special group.

G. Fundamental Dealer Problems

The debate on nearly every legislative proposal dealing with petroleum marketing concerns certain fundamental issues raised by dealers. We have already discussed a number of them. Two more are frequently raised: rents and the effect of DOE regulations.

1. Rents

Dealers have accused refiners of using rent increases as a means of "economic eviction". There is no question but that the average rent paid by a service station dealer today is much greater than it was ten years ago. It is essential, however, to understand the background and reasons for this development before attempting to assess "blame" or develop legislative solutions.

Like all real property, service station values have increased significantly and rents have increased accordingly. While service station rents have taken sizeable jumps in the last several years, it must be remembered that these increases were made against a background of Federal rent controls which, during the period 1971 to late 1975, held service station rents to unreasonably low levels.*

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* Service station rents were frozen in August, 1971 by the Price and Wage Controls Program initiated by former President Nixon. They were then decontrolled from November, 1971 to August, 1973 at which time they were again frozen. Service station rents remained frozen under regulations promulgated first under the Economic Stabilization Act and then under the Emergency Petroleum Allocation Act of 1973 until the Temporary Emergency Court of Appeals determined in November, 1975 that rent as such could not be controlled under the latter law.

What Government intervention meant to dealers was that they received service station rents which were lower than business rents generally during the period of controls, but were left with a more difficult readjustment problem when it became clear, in November, 1975, that service station rents could no longer be considered frozen.

Beginning in the summer of 1973 Chevron provided for increased service station rents in its dealer leases but suspended collection of the increased amounts because of controls. Although Chevron could have enforced increased rentals after November, 1975, it deferred such action generally until April, 1977.* Even then the transition to higher rentals was mitigated by waiving temporarily 25% of the new rent figure. That waiver was reduced to 15% effective September 1, 1978 and totally eliminated only on July 1, 1979.

Even now the rents which Chevron is able to charge in the marketplace fall far short of providing a reasonable rate of return on Chevron's service station investments. As noted earlier, the location used for a service station site must compete with other business uses for the available land. It is not widely known, but a supplier like Chevron is itself a tenant with respect to approximately half of the service station locations that it, in turn, leases to dealers. During the past few years, there have been many cases where rents paid by dealers to Chevron have not enabled Chevron to recoup the rents paid by Chevron to third-party landowners.

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* Moreover, some Chevron dealers received modest rentals for as long as ten years. In 1968, Chevron introduced a new 5-year lease. Many of these leases were renewed in 1973 at a time when rents were subject to controls. After renewal Chevron could not alter its method for determining rents at these stations until 1978.

DOE regulations have made it more difficult in other ways for dealers to cope with the problem. For example, one way to spread a fixed cost like rent is to increase volume. But the DOE regulations have made it almost impossible for a service station dealer to obtain an increased allocation. This problem was deemed critical by the Title III study group in responding to questions from members of the Subcommittee concerning higher service station rents:

> "It would appear that over the last seven years some things have changed in retail marketing and it may appear there has been a movement to higher volume outlets.
>
> "The biggest problem that a lessee dealer has is that he is incapable of moving to a higher volume outlet. A refiner may feel that a lessee dealer is the way to market gasoline through high volume outlets.
>
> "But the regulations prohibit him from making an agreement" (Testimony of Robert Fenili, Senior Economist, DOE (Transcript on Gasoline Marketing (May 8, 1980), pp. 70, 71)).

When it comes to assessing "blame", we believe Congress must take a hard look at the impact Government regulations have had on gasoline marketing. Chevron has done what it can -- within the framework of Government regulations -- to keep its dealers healthy.* And since we are dependent to a large extent on dealers, it is in our own self-interest to do so.

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* A contention sometimes made is that an individual dealer was charged a high rent to force him from his station. If these are the facts, the dealer may have an actionable claim under the Petroleum Marketing Practices Act. One ground for ending the franchise relationship is the failure of the parties "to agree to changes or additions to the provisions of the franchise" (Petroleum Marketing Practices Act § 102(b)(3)(A)). However, this provision is sharply qualified: Such changes or additions must be "the result of determinations made by the franchisor in good faith and in the normal course of business." The supplier must not insist "upon such changes or additions for the purpose of preventing the renewal of the franchise relationship" (Petroleum Marketing Practices Act § 102(b)(3)(A)).

## 2. DOE Regulations

All participants in petroleum marketing -- independent refiners, major refiners, dealers, jobbers -- have chafed under DOE's regulations. Our purpose here is not to point out all the distortions and inequities which have occurred but to discuss those particular aspects of the regulations which have made it more difficult for dealers, and especially the branded lessee dealer, to compete in the marketplace.

Dealers were able to compete effectively in the marketplace before DOE regulations came into being. However, some members of the Subcommittee are concerned that dealers will need the protection of Government to be able to compete effectively when controls are removed in September, 1981. The broader question, therefore, is whether the DOE regulations should be replaced by other laws or regulations or whether the competitive process can be trusted to provide a workable framework for the industry.

(a) Adverse Effects on Dealer

As noted earlier, DOE's allocation regulations have made it almost impossible for an existing dealer to obtain an increased allocation so that he can pump more volume through his station and thereby increase his profits through lower unit costs. Even though dealers make increased investments or can show there has been substantial growth in their areas, DOE almost invariably turns down dealer applications for upward adjustment of base period volumes. The problem is compounded by DOE's regulations for new stations. For example, a jobber can enter into an agreement to supply a new dealer. DOE, quite routinely, requires a refiner to supply the additional gasoline needed by the jobber to take on this business. This process has been going on throughout the country. After supplying additional gasoline to jobbers for the dealers they supply, refiners have less gasoline for their regular dealer customers.

Dealers also complain that they lose volume because of the intense price competition from dealerships operated by jobbers. The DOE regulations again play their role: The discounts refiners must grant jobbers are those that were in effect in May, 1973. In many cases, jobbers received discounts of 4-1/2¢ per gallon or more. With this type of discount, jobber stations can price much more competitively and pull volume away from conventional dealers.

In a highly competitive market dealers need to reduce expenses wherever they can and to recover all expenses paid in the prices charged customers. The DOE rules have thwarted this latter objective. The approach taken by the regulations is to allow a dealer a set markup. In July 1979 this was 15.4¢ per gallon. Subsequently, this was increased to 16.1¢ per gallon. If a dealer takes his maximum markup over the cost paid for the product, he cannot lawfully pass through any further nonproduct costs, such as a rent increase.

Similarly, the regulations do not permit dealers to "bank" costs. In other words, dealers cannot carry costs forward for recovery in higher gasoline prices at a later time. Dealers from time to time are faced with a highly competitive market which prevents them from immediately recovering all costs. Unless they are permitted to "bank" costs, they cannot recover them. Since July 1979, the regulations have not permitted dealers to "bank" either product or nonproduct costs.

DOE regulations with respect to pricing at refiner company-operated stations have had a further adverse impact on dealers. When DOE permitted dealers to achieve a 16.1¢ margin over the prices at which they purchased products, no similar relief was granted for refiners who sold products to consumers from company-operated stations. The effect of this was to require that refiners charge lower pump prices than competing dealers. Prices at Chevron company-operated stations were about 8¢ below those of dealers. These prices were not "predatory" but the direct result of DOE regulations.*

In summary, the regulations have tended to stifle the conventional dealer's growth and, at the same time, either require or encourage stiffer price competition from competing outlets. DOE's response to the problem was not to revise its regulations so as to permit growth but to grant pricing relief in the form of higher margins. This enabled a conventional dealer to make more profit from a given volume of sales. But, was this the right thing to do? If dealers had not been placed in such an adverse competitive position by the regulations, it is highly unlikely that margin relief would have been necessary. Moreover, the whole tortuous process of patching the regulations to solve another problem created by the regulations has resulted in higher prices for consumers.

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* Revised DOE regulations permit company stations to price closer to the street prices charged by competing dealers.

### (b) Policy Implications

The effect of DOE regulations on petroleum marketing is so pervasive that no individual marketer can afford to ignore their effect. This has prompted DOE's Office of Competition to conclude that one of the best ways to increase profitability is to seek regulatory change:

> "* * * [T]he direct intervention of the Federal government in the gasoline marketing industry has fueled animosity among competitors and even between suppliers and their customers. Federal regulations often redistribute income among firms. Often the regulations are not applied uniformly among classes of firms and exceptions to the regulations are obtained by specific firms to address their unique situations.
>
> "The net effect of the Federal government's actions has been to increase the amount of resources firms are spending in efforts to enact regulatory changes in existing regulations or changes in the way existing regulations should be applied. In today's gasoline market, this may be the most effective way for a firm to increase its profitability" (emphasis added) (Title III Study (March 31, 1980), p. 127).

It is hard to escape the conclusion that the process of regulation has gone too far when marketers are devoting inordinate amounts of time and money to change the regulations rather than competing on the basis of price, quality and service.*

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* One Chevron jobber in commenting frankly on the regulatory morass stated to us that competition is not dead. Instead, it has been rechanneled to find out how to make the regulations work in a way which is most profitable for the individual marketer.

It is not surprising that the Department of Justice, Antitrust Division, has become increasingly concerned about the conflict between the DOE regulations and the objective of promoting competition, which underlies antitrust policy. The forthright conclusion reached by John Shenefield* is that we need less regulation, not more:

> "It is my belief that a closer examination of the realities * * * and some clear thinking prove without doubt that the 'regulatory reflex' is precisely the wrong response.
>
> * * * * *
>
> "The lesson is clear. We should be extremely reluctant to attempt to duplicate what the marketplace clearly is best at doing: distributing goods and services equitably throughout our economy at fair prices. Of necessity, government intervention in the marketplace is a blunt instrument. The limitations of our own abilities and the deeply ingrained American belief in 'equal' treatment make government intervention incapable of anything other than broad adjustments" (An Antitrust Perspective on Energy Regulation: Giving Competition A Chance, by John H. Shenefield, Fed. Bar News (Dec. 1979), pp. 203, 205).

While recognizing that regulatory solutions are more "dramatic" politically, Mr. Shenefield is convinced** that energy problems must be resolved within the framework of a truly competitive economy:

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* Former Assistant Attorney General in Charge of the Antitrust Division.

** The speech gives many specific examples of problems caused by DOE regulations as well as the policy implications of enacting more regulations. We attach the entire speech at the end of this paper.

"The problem with the marketplace, of course, is that it acts subtly. There is no dramatic freeze on prices, no dynamic redirection of supply. To the poor suffering consumers or their elected or appointed representatives who must suffer their complaints, there is too little solace in the prescription: let the marketplace have a chance to work. But that, however, is precisely what we must do. To be sure, we must also see to it that all members of society are able to obtain necessary energy supplies, but that can and should be done within the competitive system.

"Competition has served us well in this country for two centuries, aided for the last 90 years by the antitrust laws. Before we too easily give up on competition, we should be sure we give it a chance" (An Antitrust Perspective On Energy Regulations: Giving Competition A Chance, by John H. Shenefield, Fed. Bar News (Dec. 1979), p. 205.

## Conclusion

For most of the last decade, the petroleum industry has been subjected to remorseless regulation. Despite the good intentions of Congress and DOE, these regulations have not worked fairly but instead have created innumerable distortions and needless inequities. It is time for Congress to take stock and determine whether this is the right approach.

We strongly believe that further study of the basic policy issues is urgently needed. The DOE regulations have been tried and found wanting. A similar fate may befall other legislative approaches unless the fundamental issues are considered before new legislation is drafted. Some of the more important questions we see are the following:

1. Should the objective of any new law be to protect a particular segment of the industry or should the objective be to benefit the consumer?

2. The basic antitrust laws of the country are designed to protect the competitive process rather than individual competitors. Should new laws be enacted to overturn this approach and guarantee the survival of individual companies?

3. Is brand marketing, with its quality control and associated services, desired by the consumer?

Is it beneficial to the conventional dealer? Should laws be enacted to encourage or discourage brand marketing?

4. The facts show that some refiners are experimenting with company-operated stations. Most refiners rely primarily on dealers. Is it good or bad for the economy if different companies pursue different marketing strategies?

5. With divorcement legislation, will consumers pay more for gasoline?

6. If refiners decide to sell service station properties, should they be required to sell them at less than fair market value to dealers even though the property would command a much higher price when used by some other business?

7. Would mandatory rack pricing eventually result in a regulatory scheme similar to the current DOE regulations?

8. Is it good or bad policy to enact new laws and regulations before the economy has a chance to sort out the innumerable problems caused by the existing regulations?

We urge that Congress first undertake a detailed study of the effect of the current DOE regulations on competition in the marketplace. It is not enough to dismiss the regulations as an unworkable experiment. It is important to know _exactly_ _why_ _they failed_. After this is completed, we recommend further that Congress undertake a thorough review of the underlying policy judgments made in the antitrust laws and the body of case law interpreting them. As we have attempted to show, the provisions of H. R. 6722, and other bills like it, conflict again and again with the basic concepts which underlie our current antitrust policy. A bill should not be enacted in this field without reviewing in some detail how it would fit in with other antitrust statutes and the Petroleum Marketing Practices Act -- all of which would continue to apply.

This review is urgently needed, moreover, to gain perspective on the balance which must be struck between regulation and the freedom of the economy to function productively, through the motivating force of competition, for the benefit of all. As the Department of Justice has stated, we are probably at the crossroads on energy matters. The fundamental question is whether we are willing to let the competitive process work:

> "We may well be at something of a crossroads in our application of competition policy to energy markets. In part because of certain events beyond America's control, an atmosphere of welcome for increased regulation of energy industries has emerged in this country. Much of this regulation is more likely to foster monopoly conditions than to control them. This is especially true where competition can and should work, if we will only let it. Before widening this regulatory web any further, it is essential that we recognize this trend and remember the costs that past mistakes have imposed on us as consumers in other areas" (Remarks by John H. Shenefield, Energy: Is Regulation the Answer Or the Problem? (August 8, 1978), p. 24).

In speaking of the "regulatory web", Mr. Shenefield was talking not only about adminstrative regulations, such as those promulgated by DOE, but restrictive laws like those enacted in response to the Great Depression:

> "My best guess is that the shock of scarcity at the time of the embargo, combined with skyrocketing prices and profits, has created a loss of faith in unregulated energy markets. This disenchantment with competition is strikingly reminiscent of the atmosphere during and immediately after the Depression. At that time, people saw competition as the cause of market failure and deflation. Regulation was seen as a way to eliminate destructive competition and to restore stability and profitability to failing industries and so we got the * * *, CAB, SEC, and agricultural marketing orders, and so on.
>
> "The economic conditions that produced these schemes have long been extinct, and we now know that the assumptions about the failure of competition were simply wrong. But their regulatory progeny are still with us. The reasons for their survival are simple enough: their costs -- whatever their magnitude -- are simply not very visible, but the industries exempt from competition understand and appreciate the benefits that result. Unfortunately, this equation leaves the consumer holding the short end of the stick" (emphasis added) (Remarks by John H. Shenefield, "Energy: Is Regulation the Answer Or the Problem? (August 8, 1978), pp. 22-23).

Chevron believes that if an intensive review of the fundamental policy questions is not made either the lessons from recent economic history will not be fully appreciated or erroneous conclusions about the competitive process may be reached. Unfortunately, if we do not learn from the past, the entire economy, due to the general importance of the petroleum industry, may be condemned to relive it.*

Chevron is fully aware of the importance of small business to the economy and believes further that every type of business operation -- small or large -- has its own unique contribution to make. The strength of our economy comes from its diversity and, as stated by the Department of Justice, from the fact that no one segment of the economy receives favored treatment:

> "This is not to say that the antitrust laws provide favored treatment to small businesses or any particular segment of our economy. The Antitrust Division's proper role is to promote the process of free competition by preserving a free market environment in which all firms may

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* This, of course, is a paraphrase and adaptation of Santayana's insight into the often cyclical nature of history.

> effectively compete. A policy of extending undue competitive advantages to small businesses -- or stated somewhat differently, of imposing competitive disadvantages on larger businesses -- would be contrary to the public interest and ultimately would be a disservice to small business itself. Such a policy would undermine a cherished right of small business: the right to grow and prosper to the fullest extent of its capabilities and potential, unhindered by anticompetitive forces. We believe that the success of any business, large or small, should be determined by its ability to produce the quality of goods and services its customers want, at the lowest possible prices. If this environment prevails, small business will prosper. Its entrepreneurial spirit, ingenuity, resourcefulness, and hard work have contributed enormously to our economy in the past, and will continue to do so in the future" (emphasis in the original) (Remarks of John H. Shenefield concerning "The Future of Small Business in America" (July 20, 1978), pp. 1-2).

The consumer and the Nation as a whole prosper only if laws are enacted within the framework of a truly competitive economy.

FEDERAL BAR NEWS, DECEMBER 1979

# An Antitrust Perspective on Energy Regulation: Giving Competition a Chance

by John H. Shenefield
Assistant Attorney General
Department of Justice

*The following remarks were presented by John H. Shenefield on September 27, 1979 at a luncheon program sponsored by the Federal Bar Association as part of the Annual Convention in San Antonio, Texas. Mr. Shenefield is Assistant Attorney General, Antitrust Division, Department of Justice, Washington, D.C.*

I'm delighted to have the opportunity to talk to you today on what is plainly one of the most misunderstood issues of public policy: competition and energy. More specifically, I'd like to share with you my perspective on the implications of increased government intervention into energy markets.

First, let's set the stage. Consider several recent developments in the markets for the two most significant refined petroleum products: gasoline and heating oil.

Who can forget the gas lines of this spring and summer? With pumps closed in some regions for all but a few hours a day, long lines during those brief hours when pumps were open, and gasoline seemingly unavailable at any price, consumers not surprisingly grew skeptical of the laws of the marketplace.

This loss of faith in the marketplace is accentuated in the minds of many observers by recent developments in the market for home heating oil. Since controls were removed from that product on July 1, 1976, there have been bitter debates between consumer groups, arguing that refiner margins on heating oil are excessive, and industry representatives, arguing that reimposition of controls will result in shortages of that product. In recent months, the price of heating oil has shot up. Because heating oil prices appear to be rising at a faster rate than crude oil prices, many consumer advocates have concluded that refiners are "price gouging" in the home heating oil market. Consequently, the federal government is under increasing pressure to take decisive action.

The perception that the petroleum industry is responsible for both the high price of heating oil and last summer's shortages of gasoline has created a powerful incentive for further expansion of our already massive federal energy bureaucracy.

It is my belief that a closer examination of the realities underlying both these problems and some clear thinking prove without doubt that the "regulatory reflex" is precisely the wrong response.

While the adoption of regulations compelling the oil industry to behave in certain specified ways has, at first glance, an appealing directness, such action cannot even begin to work without significant costs. Before we urge our governmental leaders down that uncertain route, we should be sure that the consequences of regulation, and especially the competitive consequences of that action, are fully understood.

In the past, failures to consider the competitive effects of regulatory action have led to the adoption of regulatory proposals that actually impeded the attainment of the goals they were designed to achieve. In my opinion, precisely this effect lies behind the recent developments in both the gasoline market and the home heating oil market in this country.

Since 1973 the domestic petroleum industry has been subject to a vast, and occasionally impenetrable, web of federal regulation. In that year, in response to the Arab oil embargo, Congress passed the Emergency Petroleum Allocation Act ("EPAA"), which mandated price and allocation controls for crude oil and petroleum products. This action was designed to protect consumers from high prices for refined products and to prevent that embargo from running people out of business and inflicting long-term structural changes on downstream petroleum markets.

After the embargo was lifted and adequate petroleum supplies restored, albeit at much higher prices, Congress enacted the Energy Policy and Conservation Act ("EPCA"). EPCA sought a gradual transition from regulation to competition, but retained the earlier regulations on stand-by for reimposition in the event of a future shortage. Thus, Congress clearly expressed its intention to restore competition as the regulator of downstream petroleum markets. The transition from regulation to competition, however, was to occur gradually and in a way that would soften its inflationary impact and prevent owners of domestic oil from reaping what were believed to be windfall profits at the expense of consumers.

Unfortunately, gradually is in danger of becoming glacially. While the price and allocation controls have been lifted from some petroleum products, gasoline, which represents approximately 50 percent of all refined products, still remains subject to those controls. Moreover, because the authors of EPCA envisioned a reasonably expeditious transition from regulation to competition, the original form of the regulations adopted under the EPAA was left essentially unchanged. Unfortunately, these controls were designed for a temporary supply emergency and not as a method for long-term regulation of the downstream sector of the domestic petroleum industry.

As you may know, the Antitrust Division is, at the request of the President, currently investigating the Great Gasoline Shortage of the Summer of 1979. We have already submitted an interim report to the President and work on a final report is now well under way. I have no intention of prejudging the outcome of that effort. But I think most would agree, on the basis of what we know so far, that the pervasive price and allocation regulations applicable to motor gasoline certainly worsened the effects of that shortage, and may have been a significant contributing cause as well.

Neither time nor your patience would permit a detailed description of the regulatory scheme for gasoline. But let's take a quick look at its basic framework and the rigidities that are built in. The controls in effect at the time of the shortage last spring were designed to freeze previously existing profit margins and supplier-purchaser relations. During the period from early 1975 until the beginning of 1979, supply was sufficient to meet demand at the prices set by these controls. Consequently, many purchasers moved around to seek other sources of supply. With sufficient gasoline available, suppliers were able to sell to newcomers. Thus during this time market mechanisms were working

In recent months, however, crude supplies have failed to keep up with demand for refined products, especially gasoline. Because those controls held gasoline prices down – below market-clearing levels, purchasers insisted on receiving all of the gasoline supplies due to them under the allocation controls. This in turn eliminated the surplus that had previously enabled market mechanisms to operate. Thus, as supplies stretched tight, all flexibility was removed from the market.

This inflexibility worsened the effects of last summer's gasoline shortage in a number of important ways. For example, due to the peculiarities of the cost recoupment provisions of those controls, several major oil companies were forced to reduce their prices significantly below prevailing market levels. So price, instead of dampening down demand, increased gasoline demand just at the time when conservation was badly needed, and caused many stations supplied by those companies to limit their hours of operation long before the occurrence of general shortages.

Then came the panic phenomenon. Once spot shortages began to develop in the wake of the Iranian revolution, demand for gasoline was further increased by panic-buying among motorists. Because price controls prevented retailers from responding to panic-buying by increasing their prices in order to dampen panic-induced demand, most retailers in high-demand areas responded by limiting their operations to a few hours each day. Those that did not quickly sold out and were forced to suspend operations until they received additional supplies. In either event, the result of the shortage was to force the closure of many stations.

Unfortunately, the sight of large numbers of stations closed during normal business hours further increased motorist panic, thereby placing even greater demands on the system. Moreover, since the price controls eliminated market incentives that ordinarily induce some retailers to offer service during inconvenient times such as weekends and evenings, even non-panic buyers were forced to "top off their tanks" in order to insure their mobility. In this manner, price controls appear to have placed additional pressure on already scarce gasoline supplies, thereby further aggravating the effects of the gasoline shortage.

As if that were not enough of an indictment, the allocation controls also appear to have contributed to that shortage by failing to direct available supplies to areas of greatest need. Because allocations were and are based on historical demand patterns during shortage periods, the market was and is restrained from making the kind of minor, usually unnoticed adjustments needed to keep supply and demand in balance. For example, one major and apparently unanticipated effect of the gasoline shortage was to reduce the demand for gasoline in recreational areas and to increase the demand for gasoline in urban areas as many vacationers elected to remain at home. Consequently, supplies in resort areas were abundant while many urban areas faced significant shortages. Moreover, given the inflexibility of the allocation regulations, the surplus in resort areas could not be transferred to urban areas where it was desperately needed.

All of this teaches a few simple lessons. Price and allocation controls on motor gasoline may have transformed what could have been an uncomfortable, but by no means severe, disruption of crude oil and product markets into the Great Gasoline Shortage of 1979. In contrast, had price and allocation controls been removed from gasoline in earlier years, as contemplated by EPCA, market mechanisms, enhanced by vigorous enforcement of the federal antitrust laws, would have provided significant incentives for increased investment in the facilities needed to produce gasoline and other refined products, while at the same time reducing consumption, limiting the effects of panic-buying, and ensuring the best possible allocation of available gasoline supplies. Taken together, these factors would have significantly reduced the severity of that shortage. Competition would have served the consumer well.

Lesson No. 2 involves home heating oil. The problems of the home heating oil market are of particular concern to advocates of competition, since that market has been ostensibly free from price and allocation controls for over two years. Until recently, there has been no evidence to suggest that market forces were allowing refiners, jobbers or retailers to earn higher than competitive profit levels on home heating oil.[1] In recent months, however, refiner profit margins on heating oil have jumped dramatically,[2] prompting many observers to claim that since market forces have failed adequately to control heating oil prices, price controls should be reimposed on that product. Once again, we see the urge to regulate. These events, which are of concern, may well have been triggered, at least in part, by a different kind of government intervention in the marketplace.

At the strenuous urging of many well-intentioned persons seeking assurances of adequate heating oil supplies this winter, the Department of Energy ("DOE") recently set company-specific inventory goals for the major producers of middle distillates. In addition to the setting of inventory "targets" for individual companies, DOE proposed an industry-wide goal of 240 million barrels of heating oil by October. It now appears that in order to meet these goals, some heating oil producers may have decided to reduce sales to jobbers during at least the early part of the resupply cycle in early summer, apparently choosing to retain those supplies in order to increase their stock levels. Other refiners have attempted to meet their inventory targets by purchasing additional heating oil supplies. To acquire such supplies in a tight market, however, those refiners may have been forced to bid that product away from other refiners, jobbers, retailers and consumers, all of whom are seeking to build their own inventories for the coming winter. In essence then, DOE's inventory targets may have induced many refiners either to reduce heating oil sales significantly, thereby reducing the supply of heating oil now in the market, or to increase heating oil purchases significantly, thereby increasing demand for that product. In either event, those targets would have the effect of pushing up retail prices.

This has placed DOE in a quandary. That agency adopted its system of heating oil inventory targets in an effort to ensure adequate heating oil supplies this winter. If DOE responds to the political pressures for controls to limit the price increases generated by those targets, that action would either (1) create shortages of heating oil at the consumer level, similar to last summer's gasoline shortages, the very result those targets were designed to avoid, or (2) prevent refiners from meeting their inventory targets by limiting the ability of such firms to acquire needed heating oil supplies from other sources.

"Before we too easily give up on competition, we should be sure we give it a chance."

Moreover, as if there weren't enough problems in this area already, it must be recognized that if those targets are effective in inducing refiners to increase their production of heating oil significantly, there is a very real possibility that refiners may produce too much heating oil. While overproduction of heating oil would exert at least a temporary downward force on the price of that product, it could also result in significant shortages of gasoline next spring.[3] It is highly unlikely that the benefits of a temporary oversupply of heating oil would equal or exceed the social and political costs of another round of gasoline shortages.

Thus, piling regulation upon regulation results in a never-ending series of economic distortions, each worse than its predecessor. The insistence on regulatory solutions is particularly baffling in the heating oil market given the success of earlier decisions to permit market mechanisms to govern that industry. There has been no change in the structure of that market that can be said to create an economic incentive for refiners to produce less heating oil than the market demand, or which provides refiners with the power to earn noncompetitive profit rates. Thus, there is every reason to believe that exclusive reliance on market mechanisms will ensure adequate heating oil supplies at competitive prices.

In short, our review of recent actions in the home heating oil market indicates that the establishment of heating oil targets may have inadvertently encouraged withholding by refiners, with the attendant effects of accelerating likely future price increases and pushing the price for supplies of middle distillate to unnecessarily high levels. I should emphasize that I cite this example, not as criticism of DOE, but rather as an illustration of the kind of "costs" associated with government intrusion into the marketplace – costs that must be balanced against the putative benefits of regulation.

The lesson is clear. We should be extremely reluctant to attempt to duplicate what the marketplace clearly is best at doing: distributing goods and services equitably throughout our economy at fair prices. Of necessity, government intervention in the marketplace is a blunt instrument. The limitations of our own abilities and the deeply ingrained American belief in "equal" treatment make government intervention incapable of anything other than broad adjustments. Consequently, it is almost impossible to avoid the kinds of distortions that may have led to gas lines and unusually accelerated heating oil price increases. The marketplace, however, by giving everyone an equal opportunity, can make the minor "fine tuning" adjustments that prevent demand from overheating and that distribute supplies in just the right amounts to the places they are needed.

The problem with the marketplace, of course, is that it acts subtly. There is no dramatic freeze on prices, no dynamic redirection of supply. To the poor suffering consumers or their elected or appointed representatives who must suffer their complaints, there is too little solace in the prescription: let the marketplace have a chance to work. But that, however, is precisely what we must do. To be sure, we must also see to it that all members of society are able to obtain necessary energy supplies, but that can and should be done within the competitive system.

Competition has served us well in this country for two centuries, aided for the last 90 years by the antitrust laws. Before we too easily give up on competition, we should be sure we give it a chance.

As it did in the Depression and again as it did – at least for oil – in 1973, a sense of scarcity has called forth a new skepticism about competition. In part because of certain events beyond America's control, an atmosphere of welcome for increased regulation of energy industries has emerged in this country. We should never forget that decisions about whether or not to regulate are fully within America's control; never forget in making such decisions that much of the economic regulation in our history, in energy as well as other industries, has created more problems than it has solved. I don't claim that competition policy is a panacea for all of our energy problems, but I do urge strongly that before we widen the energy regulatory web any further, we remember – and carefully count – the costs that past mistakes have imposed on all of us as consumers.

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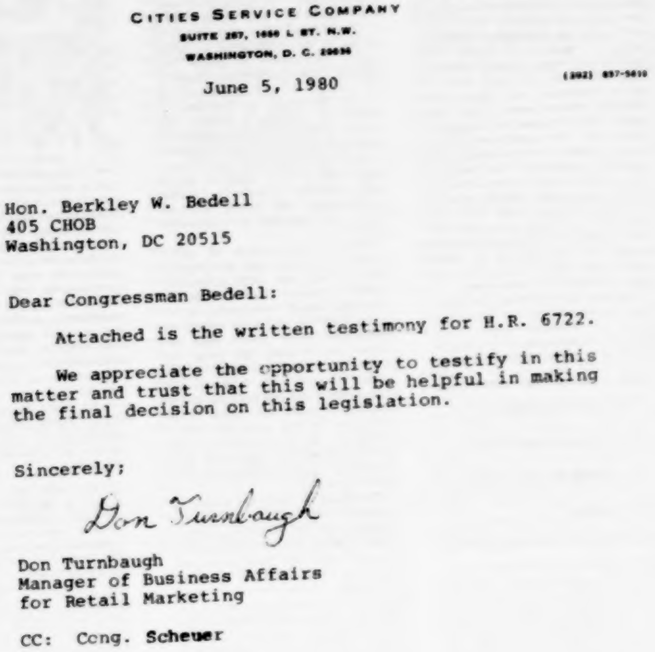
[1] *See, e.g.*, DOE Office of Hearings and Appeals, *Decision and Recommendations In the Matter of (Home) Heating Oil* (Nov. 20, 1978); DOE, *Analysis of Refiners' No. 2 Distillate Costs and Revenues, July 1976-December 1978* (March 13, 1979).

[2] *See, e.g.*, DOE, *Draft Analysis of Refiners' No. 2 Distillate Costs and Revenues, July 1976-June 1979* (Sept. 1979).

[3] *See* Washington Post, Sept. 24, 1979, at 1, col. 6 ("Oil Program May Revive Gas Lines"). The Department of Justice has also received reports that some airlines are having difficulty obtaining adequate supplies of kerosene-based jet fuel, indicating that some refiners may also be reducing their output of jet fuel in order to meet DOE's heating oil targets.

John H. Shenefield

## Exhibit 4: Cities Service Company



CITIES SERVICE COMPANY
SUITE 267, 1050 L ST. N.W.
WASHINGTON, D. C. 20036
(202) 857-5610

June 5, 1980

Hon. Berkley W. Bedell
405 CHOB
Washington, DC 20515

Dear Congressman Bedell:

Attached is the written testimony for H.R. 6722.

We appreciate the opportunity to testify in this matter and trust that this will be helpful in making the final decision on this legislation.

Sincerely;

Don Turnbaugh

Don Turnbaugh
Manager of Business Affairs
for Retail Marketing

CC: Cong. Scheuer

# Written
# Testimony By

Retail Marketing Division
Cities Service Company
Tulsa, Oklahoma

June 4 and 5, 1980

For The
Joint Committee of
Subcommittee on Anti-Trust and
Restraint of Trade Activities
Affecting Small Business

and

Subcommittee on Consumer
Protection and Finance

Subject:

HR 6722
Retail Marketing Divorcement
Introduced By:
Rep. Berkley Bedell (D-IA)
on March 6, 1980

Cities Service opposes HR 6722, retail marketing divorcement (RMD). We oppose it because it is anti-competitive, inflationary, and totally unnecessary.

Our comments will provide a capsule of the marketing history of Cities Service to demonstrate how we've attempted to respond to the evolution in gasoline marketing. We will also attempt to show how the market controls itself, and how the dealers have been unresponsive to changes in the market place.

History is filled with examples of companies whose rise to the top was followed by a sudden fall into obscurity.

Take American Woolen as an example. At one time they had a lock on the market. Today, they are out of business, because they didn't respond to changes in technology.

Curtiss-Wright was another company that had a rapid rise to the top. It was 28th among U.S. Corporations in 1945. Today it is not even on the Fortune 500 list. When the war was over, Curtiss-Wright stayed with props, while its competitors responded with jets, and you know the rest of the story. Change is essential for a business to survive.

Cities Service began marketing gasoline in the early 20's, primarily through dealers and distributors. Up until today we have survived. We have survived because we made the right decisions when we had to. Cities Service encountered serious retail marketing problems 15 years ago. The problem for us was a high dealer turnover rate that was expensive and did not contribute to an efficient marketing program. It was at this time in CITGO's marketing history that we realized a company that was only 40 - 45% crude sufficient could not compete with the major petroleum marketers. The majors have much lower crude costs, plus a much larger financial base to work from. Realistically, we didn't belong in the big leagues. This is not to say that we didn't have enthusiasm and confidence in our ability to market gasoline, because we did. But we had to determine in what league we could be competitive. Since the late 60's we have completely redesigned our marketing organization to meet what we consider to be the wave of the future.

The grandious plan of a service station on every corner in every town, in every state, and a credit card in every consumer's hand was stricken from the long-range plan. Trimming costs and excess fat became our major concern. As a result, we totally restructured our programs.

The following are examples of our diverse marketing system of today:

- Dealer operated service stations with pricing that we refer to as Dealer Delivered Price
- Direct Operated Quik Marts that sell gasoline and convenience items.
- Distributor gasoline sales through a rack pricing program.

Each operation has an opportunity to respond to a well-defined market segment. The success of the program depends on how well it is managed and how the operation responds to the needs of the consumer.

We have alluded to consumer needs and changes in the marketplace. The single most important changes has been a shift from full service gasoline marketing to self-service. This shift began in the late 60's and gained momentum during the 1973-74 oil embargo. The transition has, without a doubt, been the single most important change in gasoline marketing history.

Self-service shifted emphasis from the needs of the car - to the needs of the consumer. In developing our concept of combining gasoline and convenience items, we realized that the driver of the car has more day-to-day needs than the automobile itself. A car, on a daily basis, consumes only gasoline. A person - on the other hand - consumes milk, bread, soft drinks, snacks, cigarettes, and many more items. These are the products we carry in our company operated stores.

This program has been the most successful in Cities' marketing history. Why? Because we've responded to the needs of the consumer. The consumers have voted, and they've voted for convenience and value. And that, (ladies and) gentlemen, is the future of gasoline marketing.

Forcing the refiner/marketers out is not going to solve the dealers' problems, because if the consumer can't get what he wants from the traditional dealer-operated station, he'll turn elsewhere. And someone will step in to fill the void left when the refiner/marketers leave.

The dealers claim that the oil companies are putting them out of business, but they fail to mention all the other competitors on the block.

Midas specializes in mufflers. They have the exact muffler you need on hand, and guarantee it for the life of your car. Firestone, Goodyear and B. F. Goodrich offer a wide variety of tires, tire service and other automotive services, at convenient locations. K-Mart, Target, Sears, Montgomery Ward, and a host of other discount houses provide similar maintenance and repair services and they offer extended hours.

The dealers cry, "Unfair business practices!" But are the practices really unfair? Is it anti-competitive to respond to consumer demands? And judging from the facts, the consumer wants the kind of services we've been offering.

It is our belief that the consumer is, and should be, the judge of who succeeds and who fails in the business world. We believe that - in the absence of anti-competitive practices - there is no justification for legislative interference in this process.

And notwithstanding the cries of the dealers, the facts show there is no mass take-over of retail outlets by the industry. The DOE, Title III, Study on subsidization shows that gasoline sales through direct operated outlets of refiner/marketers has grown only 4.4% since 1972. That does not fit our definition of a "mass take-over".

The dealers charge that the majors subsidize direct outlet sales, allowing the outlets to undercut the dealers. However, the DOE report disagrees, saying, "If a company sells gasoline at a low price to consumers and simultaneously is able to earn higher profits at retail than at wholesale, we aren't observing subsidization of marketing." It simply is a more efficient method of marketing gasoline at a time when efficiency is critical.

We agree that the dealers are experiencing problems. They have been hurt by the energy crunch and by allocation regulations.

However, we believe one of the main causes of the dealers' dilemma has been their own failure to respond to changing consumer preferences.

To summarize, we feel:

1) the problems of the dealers are economic rather than overt acts of subversion by refiner/marketers as claimed.

2) the consumer, not the legislature, is the best source for the decision of who should survive in the marketplace; and,

3) the dealers deserve better business advice and counsel than they are getting from the leaders of their organizations.

Mr. Chairman, distinguished members of the committee, divorcement legislation has been introduced and defeated in 30 states. It seems inappropriate to consider legislation on a national basis, which has been overwhelmingly defeated by the states. We urge you to vote against HR 6722.

6/02/80

## SPECIFIC COMMENTS ON HR 6722

The following are specific comments that reflect the position of Cities Service Company on the provisions of HR 6722.

### 1) Divorcement: "Refiner Sales Ratio"

The "Refiner Sales Ratio" is totally unworkable for the industry, because of administrative implications, and totally unworkable for the consumer because it could cause marketers to raise prices to maintain a certain sales ratio. This type of legislation serves only to protect a segment of marketing from the normal marketing processes. It is protectionism - plain and simple.

### 2) Dealer Rights: Purchase of Service Station Real Estate

Since the rules concerning the appraisal to determine property values have, as yet, to be established, we must take the position that we cannot support HR 6722 regarding this subject. It is categorically wrong to be forced to sell your property to a second party at an appraised price without the opportunity to sell to a third party at a fair market price.

### 3) Open Supply

The open supply provision would turn gasoline marketing into total chaos with the demise of the branded concept of marketing. The dealer would have as much to lose as anyone if this concept grew to the point where suppliers abandon their branded marketing program. The withdrawal of credit cards, brand identification signs, brand advertising, etc. would reduce dealers strictly to the services they can provide personally for their consumers.

4) Rack Pricing

We are not able to support the Rack Pricing provision of HR 6722. We believe it is in violation of the free enterprise system and interferes with the workings of the marketplace. Each company should be able to determine on its own, the method of selling their product, which is most suitable to them and their customers.

6/02/80

## Exhibit 5: Exxon Company, U.S.A.

EXXON COMPANY, U.S.A.
POST OFFICE BOX 2180 · HOUSTON, TEXAS 77001

MARKETING DEPARTMENT
E. J. HESS
VICE PRESIDENT

June 11, 1980

The Hon. Berkley Bedell, Chairman
Subcommittee on Antitrust and
Restraint of Trade Activities
of the Small Business Committee
405 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Bedell:

Attached to this letter is a written submission that Exxon respectfully requests be included in the record for hearings on H.R. 6722. Your further consideration of the comments that follow will be appreciated.

It is apparent from a review of the testimony presented on this legislative proposal that there is a genuine concern among some dealers over certain aspects of the dealer-supplier relationship in petroleum marketing. Exxon Company, U.S.A. believes, however, that this relationship is already adequately protected by the Petroleum Marketing Practices Act. Moreover, since many of the problems in the gasoline marketplace today are caused or amplified by governmental regulations, the removal of motor gasoline allocation and price controls -- not more legislation -- will improve the well-being of gasoline retailers and wholesalers and will restore the traditional dynamic character of gasoline marketing. Such a restoration will obviously benefit consumers.

Our review of the statements made before the Joint Subcommittees found several references to Exxon's operations. We plan to address the specific allegations directed at Exxon's marketing practices in a subsequent letter after we have had the opportunity to review the complete hearing transcript.

Sincerely yours,

E. J. H

EJH:meb
Attachment

c: Members, House Small Business Subcommittee
on Antitrust and Restraint of Trade
Members, House Commerce Subcommittee on
Consumer Protection and Finance

A DIVISION OF EXXON CORPORATION

STATEMENT OF EXXON COMPANY, U.S.A.
TO THE
SUBCOMMITTEE ON ANTITRUST AND RESTRAINT OF TRADE
OF THE SMALL BUSINESS COMMITTEE
AND
THE SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCE OF THE
INTERSTATE AND FOREIGN COMMERCE COMMITTEE
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.
CONCERNING H.R.6722
THE SMALL BUSINESS MOTOR FUEL MARKETER PRESERVATION ACT
June 5, 1980

This statement is submitted by Exxon Company, U.S.A. for the hearing record on H.R. 6722, the Small Business Motor Fuel Marketer Preservation Act.

## INTRODUCTION

Independent retail dealers and wholesale distributors are very important parts of the petroleum marketing system which has historically served consumers well. Independent businessmen currently operate over 96% of all outlets under the Exxon brand. Looking to the future, we expect that independent businessmen will continue to operate the vast majority of all Exxon branded service stations and bulk plants.

The stated justification for H.R. 6722 is the contention that a large number of small independent businessmen have been forced out of the gasoline marketplace. In support of that contention Department of Energy statistics have been cited which indicate that refiners have more than doubled their volume at stations which they operate directly.

The decline in the number of refiner-supplied gasoline dealers is not attributable to suppliers forcing dealers out of business, but rather to natural changes expected in any dynamic business; e.g.:

- Normal economic forces removing unprofitable outlets from the marketplace.
- Economic decisions to serve many stations by jobbers rather than directly by refiners or by bulk plant commissioned managers.

Since the early 1970's, a large number of stations have been removed from the refiner-owned chain for economic reasons. This may happen for a number of reasons such as population shifts and trade area or traffic changes. In many cases, however, the incumbent dealer remains in business, sometimes at the same location. Dealers in stations being disposed of by refiners often purchase the station or lease it from the new owner. In cases where the incumbent dealer does not foresee a profitable operation, he may transfer to another service station of the same brand or another brand. Records show that about half of the dealers in Exxon-branded stations being disposed of, either buy the station, lease it from the new owner, or transfer to another Exxon-branded outlet. Those stations that do close and no longer function as service stations are uneconomic to the supplier and generally to the dealer as well. Further, their closing is beneficial to the remaining dealers in the trade area who pick up the closed station's volume and related automotive service business.

Stations formerly served by refiners or by bulk plant commissioned managers, but which are now served by jobbers, are often incorrectly counted as eliminations because the store counts shown in the DOE Market Shares Reports do not include jobber-served outlets. Distribution changes of this type rarely affect the incumbent dealer who generally remains in the same service station. The number of stations changed to jobber-served is substantial. This conclusion is based on DOE Petroleum Market Shares Reports which confirm that jobbers are currently supplying a significantly increased share of the gasoline market. Branded jobbers of the large integrated refiners have increased their percentage of total motor fuel sold from about 21% in 1972 to about 29% in 1979. Exxon jobbers supply over 11,000 retail outlets, almost double the level supplied in 1972. None of these are included in DOE station counts.

The statement that refiners have more than doubled their direct-operated station volume is misleading. The doubling of refiners direct-operated station market share is based upon DOE Market Shares Reports which report only the amount of gasoline sold by refiners to branded dealers and to the public at service stations. This accounts for only about 65% of total refiner sales. Since jobbers are also independent businessmen, it seems appropriate to include their volume in any analysis of the effect of refiner direct operations upon independent businessmen.

Using 100% of motor fuel sold to all categories of business as a base, sales to independent businessmen increased and refiner-operated station market share grew four percentage points to 12.2% from 1972 to 1979. Also, refiner-operated station market share has been flat since 1977. The following table provides the detail by category for all refiners and for "large integrated refiners," a DOE classification which includes 16 integrated refiners who obtain less than 70% of refinery input from outside purchasers. Volume sold by dealers in jobber-served outlets appears in the jobber -- not the dealer -- category.

PERCENT OF GASOLINE SOLD

| | All Refiners | | Large Integrated Refiners | |
|---|---|---|---|---|
| | 1972 | Feb. 1979 | 1972 | Feb. 1979 |
| Refiners | | | | |
| Direct-operated stations | 8.2 | 12.2 | 4.5 | 7.3 |
| Bulk purchasers | 9.5 | 5.4 | 11.7 | 6.9 |
| | 17.7 | 17.6 | 16.2 | 14.2 |
| Independent Businessmen | | | | |
| Dealers | | | | |
| Lessee | 36.4 | 25.5 | 43.8 | 32.9 |
| Open account | 9.5 | 9.9 | 12.2 | 11.7 |
| | 45.9 | 35.4 | 56.0 | 44.6 |
| Jobbers | | | | |
| Branded | 20.6 | 25.2 | 20.8 | 29.2 |
| Nonbranded | 14.4 | 21.8 | 6.9 | 12.0 |
| | 35.0 | 47.0 | 27.7 | 41.2 |
| Total Independent Businessmen | 80.9 | 82.4 | 83.7 | 85.8 |
| Grand Total | 98.6* | 100.0 | 99.9* | 100.0 |

*Does not add to 100% on DOE report.
Source: DOE Petroleum Market Shares Reports

It should be noted that large independent and small refiners account for the major part of direct-operated station market share increases. Large integrated refiners have followed different strategies with respect to sales through refiner-operated stations and sales to lessee dealers and jobbers. While some refiners may have increased company operations, others -- including Exxon -- have reduced the percentage of gasoline sold through refiner-operated stations. Thus, there is obviously no concerted effort to control the retail market. Rather, competitors are responding to consumer demand in different ways based on individual perceptions of the best strategy for each company.

As a final note on this market share volume issue, Part I of the DOE Title III Study Report concludes that major refiners have not channeled substantial quantities of gasoline away from the dealer network into the company-operated chain.

## KEY PROVISIONS OF H.R. 6722

The remainder of this statement will address the key provisions of H.R. 6722 affecting Exxon Company, U.S.A.:

- Retail Divorcement
- Dealer Right to Purchase His Station; SBA Loans.
- Rack Pricing
- Open Supply

## RETAIL DIVORCEMENT

Exxon is opposed to the retail divorcement provision of H.R. 6722 because the prohibition or restriction of this traditional mode of retail competition is unnecessary, anticonsumer, and anticompetitive.

Unnecessary -- The Petroleum Marketing Practices Act of 1978 already provides gasoline retailers protection against termination and nonrenewal for the purpose of taking over the station for refiner operation. Moreover, there has been no significant increase in refiner-operated stations. Over the past few years, Exxon's number of company-operated stores has declined slightly. While Exxon believes companies that have made large investments in service stations should have the legal right to operate them with their own personnel, the Company does not foresee changing toward more company-operated stations. Exxon company-operates a limited number of service stations for many consumer-oriented reasons and for the retail profit. Company-operated stations, however, require a lot of administrative support and are labor-intensive. Particularly for that reason Exxon does not expect to change its basic philosophy of relying on dealer and jobber operations for the vast majority of its retail marketing distribution system.

Further on the point of the number of company-operated stations, Part 1 of the DOE Title III Study Report found that there was no mass movement toward company store operations by refiners.

Another reason frequently given for retail divorcement is that refiners allegedly charge unfair prices at their company-operated stores and thus indirectly force dealers out of business. Existing laws such as the Sherman, Clayton, Robinson-Patman and FTC acts already afford dealers effective protection against alleged predatory pricing. Moreover, Part 1 of the DOE Title III Study Report did not find evidence of predatory pricing.

Anticonsumer -- The legislated prohibition of company-operated retail outlets would remove an element of competition from the marketplace. The resultant reduction in competition could be expected to adversely impact the consumer. As the Department of Justice noted after the U.S. Supreme Court's decision on the state of Maryland retail divorcement law, consumers could reasonably expect to have to pay higher prices as a result of this type of legislation in the states in which it is passed. The Department of Energy has estimated that a ban on refiner-operated stations in New York would increase consumers' gasoline bills more than $1.5 million a month.

Another anticonsumer effect could be a reduction in the level of service and in the number of consumer choices in the gasoline marketplace inasmuch as affected companies would no longer be able to use their company-operated service stations to:

- Develop innovative marketing concepts under controlled conditions at the company's expense and risk. Successful results are then passed on to dealers. For example, Exxon experimented with self-service extensively before recommending it to dealers.

- Train employees and prospective dealers in proven consumer-oriented operating procedures.

- Operate a station temporarily in order to continue serving the consumer when a dealer leaves unexpectedly.

- Set consistent and high standards for sales, service, and appearance for all operations.

To amplify the last point, company-operated stations are intended to serve as models to dealers to respond to consumer needs through good retailing practices; e.g., observing convenient hours of operation, maintaining clean and attractive facilities, and performing normal driveway services. This "model" concept applies as well during periods of short supply when motorists have to wait in line to purchase their fuel requirements. During those periods company-operated stations follow consumer-oriented practices such as proper signing of operating hours, traffic direction to pump islands, and good housekeeping. Moreover, during short supply periods, companies with employee-operated stations can network their hours and days of operation to make motor fuel available most of the time at some location for consumer convenience.

Anticompetitive -- In reviewing federal legislation similar to H.R. 6722, proposed for inclusion in the Petroleum Marketing Practices Act, the Department of Justice concluded that legislation of this type "would be anticompetitive not procompetitive. Its major purpose appears to be the protection of the market position of individual petroleum distributors and not the protection of competition."

Retail divorcement would not only reduce total competition with the price effects upon the consumer expected by the Department of Justice, but it would also particularly discourage certain types of competition; e.g.:

- Entries into new geographical markets because companies would be precluded from using company-operated service stations in order to establish the brand acceptance necessary to attract highly competent dealers.

- Bidding on contractual business such as turnpike service stations since frequently company-operation of these facilities is necessary in order to assure compliance with contractual conditions required by turnpike authorities.

Finally, Exxon views retail divorcement as similar to the anti-chain store and fair trade laws of the 1930's. Both the chain store and fair trade laws were attempts by one segment of the market to remove competition by another segment through legislation and were contrary to consumer interests. These laws reduced the level of competition in the marketplace and resulted in fewer consumer choices and higher prices. In response to consumer pressure the 95th Congress repealed the federal statutes that permitted local fair trade laws to exist.

## DEALER RIGHT TO PURCHASE HIS STATION -- S.B.A. LOANS

H.R. 6722 would give the incumbent dealer the right of first refusal -- i.e., an exclusive 60-day option to buy -- before a refiner may dispose of his interest in a service station. There is no need for additional legislation to protect the dealer's interest in the service station he is leasing because the Petroleum Marketing Practices Act of 1978 already protects the dealer in this area. The provisions of PMPA in this connection may be summarized as follows:

First of all, nonrenewal of lease agreements is permitted only for specified reasons. Secondly, when a refiner wishes to nonrenew a service station lease because of uneconomic operation, material change in operation, or market withdrawal, the refiner must:

- Make a bona fide offer to sell, transfer or assign the premises to the dealer.

- Offer the dealer the right of first refusal to meet the offer of a third party, or

- In case the premises are transferred to another supplier, that new supplier must offer an equivalent franchise to the dealer.

The protection provided in PMPA is more evenhanded than that which would be afforded dealers under the language in H.R. 6722 which tends to exclude third party offers to purchase. The reduction in competitive bidding would tend to deny consumers the benefits of conversion of property to other than service station use. Moreover, the proposal would eliminate good faith negotiatinn between the refiner and dealer and may needlessly prolong the closing of the sale. If the dealer makes a counteroffer, the refiner cannot negotiate a selling price between his and the dealer's offer. His only option is to agree to accept an appraised value and await the dealer's response. The result of this delay would be the continuation of uneconomic operations.

The SBA Loan Guarantee Provision in H.R. 6722 would guarantee loans for a select group of small businessmen. As such, the provision is discriminatory against those small businessmen who are not favored by this provision.

RACK PRICING

The sponsors of H.R. 6722 contend that the rack pricing provision is necessary to assure dealers a fair chance to compete in the retail motor fuel market and to protect consumers from higher motor fuel prices. Exxon does not agree with that opinion because existing laws already protect dealers from unfair pricing practices, and market forces have traditionally provided the greatest pricing flexibility and the lowest prices to consumers.

Exxon is opposed to any legislated motor fuel pricing system. Experience with years of price and allocation controls on gasoline has clearly shown that distortions result from any interference with competitive market forces. Furthermore, many changes in the delivered pricing system would have taken place over the past several years if it had not been for the governmental regulations which have frustrated such changes. Therefore, instead of additional pricing legislation, such as that proposed in H.R. 6722, a relaxation of controls would permit gasoline marketers to correct anomalies in the marketplace and to make adjustments based on each company's perception of how it can best serve changing consumer demand. This type of normal evolution characterized gasoline marketing prior to the imposition of controls in 1971 and 1973.

The mandated rack pricing system that H.R. 6722 would impose could revolutionize gasoline marketing rather than permit an orderly evolution. Such a pricing system would have immediate and far-reaching effects on many independent businessmen because it would radically change the method by which gasoline has traditionally been priced and marketed. The changes would impact the low-volume dealers and distributors the hardest. Small dealers would see their unit costs raised to the extent that separate flat fee charges over the base rack price are assessed for services such as storage tanks and dispensing equipment. Similarly, small distributors would be harmed if they lose customers who elect to purchase at the rack and secure elsewhere the services the distributor performs.

Moreover, this mandated rack pricing system could eventually deprive thousands of branded dealers and millions of motorists of the choice to purchase branded gasoline. Two-thirds of the motorists today still prefer to buy branded gasoline because they want the assurance of quality products and service, and the convenience of credit cards. Mandatory rack pricing, on the other hand, could substantially weaken the ability to control product quality and brand integrity and eliminate the incentives for a refiner to provide these benefits. Absent such incentives and control over brand integrity, branded motor fuels could well disappear from petroleum marketing.

Rather than forcing all motor fuel marketers to rack pricing by legislation, as H.R. 6722 would do, an individual company should be free to choose the pricing structure it perceives will be best for its present and future distribution system. Exxon markets branded nonfungible gasolines. Included in the price of these gasolines is a package of values, some of which can be clearly defined and quantified, such as transportation and the credit card privilege. Other values are not easily calculated. For example, the counseling service that a supplier provides to assist a dealer with merchandising support, business advice, etc., for a wide variety of products and services is difficult to allocate against a particular grade of gasoline. The brand value itself defies quantification because this value represents the reputation earned by the supplier in specific markets over a long period of time through customer acceptance, and it may vary geographically and among customer segments. The pricing structure proposed in H.R. 6722, however, is predicated upon the assessment of separate charges for services over the unbranded price -- including the "brand value."

Exxon has been studying several possible changes in its delivered pricing system, many of which would offer advantages similar to those associated with rack pricing, such as more equitable transportation costs and the method of recovering credit card costs. While existing federal regulations have prevented implementation of such programs, Exxon has tested a discount for cash program that would permit customers who do not purchase on a credit card to buy at a price that excludes the recovery of credit card costs. This concept would be more equitable to cash customers and should be more attractive to branded dealers in competing for the cash customer. The elimination of restrictive regulations -- not more legislation -- can restore the historical dynamic character of gasoline marketing.

Finally, the rack pricing provision will adversely affect consumers because the provision removes the Robinson-Patman defense for meeting competitive offers. This will tend to reduce competition and raise prices to consumers.

## OPEN SUPPLY

The provision in H.R. 6722 restricting interference with the dealer's right to purchase, store and sell motor fuel acquired from another supplier is unnecessary and anticonsumer.

Existing laws already afford adequate protection to all affected parties -- the dealer, the supplier, and the consumer. The dealer's right to purchase products from more than one source is protected by federal antitrust laws such as the Clayton and Sherman Acts which prohibit exclusive dealing. The supplier's right to protect a trademark is supported by the Lanham Act and the Petroleum Marketing Practices Act, as well as by misbranding laws in most of the states. The consumer's right to product information is protected by Section 5 of the Federal Trade Commission Act which prohibits deceptive trade practices -- and by comparable laws in all but two states.

This open supply provision, along with other provisions of H.R. 6722, could discourage the sale of branded motor fuel through the promotion of the concept of gasoline fungibility. Any diminution of branded marketing would be detrimental to consumers accustomed to purchasing branded motor fuels because the marketing of a trademarked motor fuel is distinguished from commodity marketing in several consumer-oriented ways; e.g., quality products and credit cards. These consumer benefits could be eliminated if the incentives are removed for a refiner to develop the marketing systems essential for a successful branded marketing program.

## CONCLUSION

In this statement, Exxon has shown that H.R. 6722 is unnecessary and is anticonsumer. Furthermore, in several respects the proposed legislation would not provide the dealer with the assistance that the legislation purports to offer. A favorable business environment that would come from the removal of motor gasoline allocation and price controls would do much more than this special interest legislation to improve the well being of gasoline retailers and wholesalers. Dealers and consumers would benefit by the removal of these controls as the climate produced would encourage the modernization of dealer stations and market changes that would make them more viable.

The removal of price and allocation controls would not result in unrestrained motor fuel marketing because, as has been mentioned throughout this paper, there are already sufficient laws on the books to regulate gasoline retailing and to protect dealers and distributors. Exxon believes that all segments of motor fuel marketing -- suppliers, distributors, and dealers -- can operate reasonably under the antitrust laws and the Petroleum Marketing Practices Act. Once restored to that level of regulation, these segments can then get on with the most important task, which is serving the consumer in an increasingly efficient manner.

## EXHIBIT 6: GULF OIL CORPORATION

GULF OIL CORPORATION
PUBLIC AFFAIRS DEPARTMENT
1025 CONNECTICUT AVENUE
WASHINGTON, D. C. 20036

C. WAYNE HARMON
DIRECTOR
CONGRESSIONAL RELATIONS

AREA CODE 202
659-8720

June 10, 1980

The Honorable Berkley Bedell,
Chairman
Subcommittee on Antitrust and Restraint
of Trade Activities Affecting
Small Business
B363 Rayburn House Office Building
Washington, D. C. 20515

Dear Mr. Chairman,

As a follow up to your joint Committee hearings last week on H.R. 6722, "The Small Business Motor Fuel Marketers Preservation Act of 1980," Gulf Oil Corporation submits the attached statement for inclusion in the record of the hearing.

Should you or your staff have any questions, please let me know.

Sincerely,

C. Wayne Harmon

C. Wayne Harmon

cc: Congressman James H. Scheuer
Subcommittee Members

# Statement of
# GULF OIL CORPORATION
Submitted to the
Subcommittee on Antitrust and
Restraint of Trade Activities Affecting Small Business
of the Committee on Small Business
and to the
Subcommittee on Consumer Protection and Finance of
the Committee on Interstate and Foreign Commerce
on
H.R. 6722
The Small Business Motor Fuel Marketer
Preservation Act of 1980

The stated purpose of H.R. 6722 is to benefit retail gasoline dealers by preventing refiners from operating retail marketing outlets, but the primary result of H.R. 6722 would be to reduce competition in the petroleum product marketplace.

While Gulf Oil Corporation believes that suppressing competition is bad public policy and sufficient grounds for opposing such legislation, we also wish to point out that important consequences threatening injury to consumers' interests will result in the event H.R. 6722 is enacted.

These consequences arise directly from this anti-competitive policy and include: an increase in the price of petroleum products to consumers, loss of service and convenience to the motoring public, and curtailment of innovation and market testing on the part of the petroleum refining industry.

On the basis of price considerations alone, a strong case can be made for allowing petroleum refiners to continue to operate their own retail marketing outlets.

- The DOE has estimated that the total foreclosure of refiner-operated stations in the State of New York could have increased consumers' gasoline bills by more than $1.5 million for just the month of July 1979.
- Professors L. M. Lamont and C. F. Phillips, Jr. of Washington and Lee University estimate that consumers would have to pay up to four cents per gallon more if retail divorcement were enacted.

- Professors C. E. Krider and E. L. Richards of the University of Kansas state that, "Divestiture proponents must be cautioned that the price of such an end will be high to consumers."
- In a recent study, the Petroleum Industry Research Foundation, Inc. also concludes that retail divestiture would result in a less competitive market with higher gasoline prices.

Prices aside, for a motorist searching for gasoline at odd hours, the implications of retail divorcement could be crucial. Company-operated stations frequently remain open long hours each day and on weekends and holidays. At such times a company-operated station may provide the only source of gasoline and other products in a particular area.

A less innovative retail environment must also be expected should retail divorcement become law. For years, companies have used refinery-operated stations as testing grounds for improved facility designs, new products, and innovative marketing approaches. By eliminating company-operated outlets, retail divorcement would effectively curtail such experiments.

Gulf's company-operated retail outlets are the self-serve type and do not compete with those dealers catering to the customer wanting full service. Instead, our self-service outlets offer the consumer a choice...one they can make...of serving themselves and benefiting from the lower gasoline prices which become available through the lower overhead costs associated with a self-service station.

During the past decade, Gulf has varied the number of company-operated outlets in direct response to market conditions and consumer preferences. The number of Gulf company-operated retail outlets peaked in 1976 at 1,323, representing seven percent of total Gulf branded (18,856) service stations. Out of 17,550 total service stations in 1979, only 875, or five percent of the total, were company-operated outlets. Gulf continuously monitors the performance of each company-operated unit and this reduction reflects the elimination of those units which did not meet certain standards of profitability.

As the Gulf record shows, H.R. 6722 would impose a measure which is not germane to the problem. The problem results primarily from fundamental changes in the pattern of gasoline consumption by the motorist. Retail divorcement can do nothing to turn back the clock on these changes. It cannot reverse the forces that have irrevocably changed the marketplace: expensive petroleum, heightened price consciousness and changing consumer preferences, the do-it-yourself trend, or the emergence of new types of competitors, such as mass merchandisers, convenience stores, car washes, and tire and muffler franchisers.

Retail divorcement only offers consumers reduced competition, increased prices, reduced choice, less service and product innovation, increased inflation and a destabilized distribution system, all without any offsetting consumer benefits. Retail divorcement is clearly not in the public interest.

The most direct step which policymakers could take to assist the independent retail dealer would be to lift the system of price and allocation controls and programs. This would return the system to a free market and remove the artificial price distortions created by the regulations. This would provide the efficient independent retailer the flexibility to improve his own position and to improve his service to the consumer as well.

Indeed, the central theme of the Department of Energy study entitled, "The State of Competition in Gasoline Marketing", is that the observed relative decline of dealer-operated service stations is due to changed economic circumstances and federal government regulations, not subsidization of company-operated service stations. The fourth chapter of that report reaches certain relevant conclusions concerning the impact of federal government regulation which in summary are:

1. Federal regulations have raised the market shares of independent marketers. More specifically, from 1974 to 1978 the class of trade labelled jobber/wholesaler/chain retailer increased its

federal allocation base by almost nine percentage points. In contrast, dealers' allocation share decreased almost eight percentage points.

2. Dealers, of all independent industry groups, are most adversely affected by the federal allocation system. Dealers cannot upward certify gasoline allocations for themselves, and the allocation rules tend to work against individuals or firms operating at only one location. Furthermore, refiners are limited in adding gasoline volume to existing outlets by allocation regulations.
3. The intervention of the federal government in gasoline marketing has been pernicious. That intervention has redistributed income among firms, failed to apply regulations uniformly among classes of firms, and made exceptions for specific firms. Consequently, the direct intervention of the federal government has fueled animosity between suppliers and their customers. The study judges the net effect of federal intervention to have been to induce firms to seek higher profits through federal regulatory changes.

Rather than focusing the efforts of this Committee on protecting dealers through eliminating competition and raising prices to the public, Gulf believes that the efforts of this Committee would best be directed toward eliminating those federal regulations which are even now reducing dealers' competitive opportunities.

Such action would allow dealers to strengthen their competitive position, restore greater flexibility and competition to the marketplace, and ultimately benefit the public as well.

6/3/80

## EXHIBIT 7: MARATHON OIL COMPANY

John S White
Special Counsel
Government Affairs

**Marathon
Oil Company**

1800 M Street NW
Washington DC 20036
Telephone 202/331 1340

June 12, 1980

The Honorable Berkley Bedell
Chairman
Subcommittee on Antitrust and
  Restraint
Committee on Small Business
363 Rayburn Office Building
Washington, D. C. 20515

The Honorable James H. Scheuer
Chairman
Subcommittee on Consumer Protection
  and Finance
Committee on Interstate and Foreign
  Commerce
3275 House Office Building Annex II
Washington, D. C. 20515

Gentlemen:

There are enclosed for inclusion in the hearing record on H. R. 6722, Marathon Oil Company's views and comments on the proposed legislation.

Sincerely yours,

John S. White

dhm

John S. White

# STATEMENT OF

# MARATHON OIL COMPANY

Before the
Subcommittee on Consumer Protection and Finance
of the
Committee on Interstate and Foreign Commerce

and

Subcommittee on Antitrust and Restraint of Trade
of the
Committee on Small Business

U. S. HOUSE OF REPRESENTATIVES

SUBMITTED FOR THE HEARING RECORD
ON H. R. 6722
THE SMALL BUSINESS MOTOR FUEL MARKETER PRESERVATION ACT

The following statement is submitted by Marathon Oil Company for inclusion in the record of the joint hearings held by the House Small Business Antitrust Subcommittee and the House Commerce Consumer Affairs Subcommittee on H. R. 6722, the "Small Business Motor Fuel Marketers Preservation Act of 1980."

## PROFILE OF MARATHON OIL COMPANY

Marathon is a medium sized integrated oil company engaged in exploration, production, transporation, refining and marketing of petroleum and petroleum products. It markets a full spectrum of petroleum products in 21 Midwest and Southeast states.

For many years, the majority of Marathon's gasoline sales (60% in 1979) has been to independent marketers who resell the product under their own brands and trademarks. Another 15% of its annual gasoline sales are to independent marketers who resell the product under Marathon's primary trademark -- primarily its lessee dealers and jobbers. Thus, 75% of Marathon's total gasoline sales are to independent businessmen. It also, through a wholly owned subsidiary, engages in the direct retailing of 25% of its gasoline under secondary brands -- Bonded, Speedway and Gastown.

Marathon sells gasoline through numerous channels of distribution of classes of trade. It caters to all of these

best copy available

classes and in no way does it discriminate against any class. Each of these channels of distribution exists because of the consumer demand for the particular services each type of marketer offers.

The costs of these different services are reflected in the prices Marathon charges to the various classes of trade. All sales of Marathon gasoline that do not involve services, such as transportation or credit cards or use of the Marathon brand, are made at a terminal price. Every customer purchasing at the same terminal and at the same time pays the same price (called the wholesale dock price) and, assuming equal credit worthiness, is extended the same credit and other terms of sale. All such customers -- including Marathon's subsidiary -- take title to gasoline at the terminal rack and are responsible for and pay separately for transportation of the product to their respective business locations.

However, Marathon branded independent marketers receive additional services beyond the terminal -- and those services involve higher costs for Marathon -- thus higher prices for the customers. Therefore, in a given area, dealers pay one price (the dealer tank wagon or DWT price) and receive a large number of extra services; branded jobbers pay another price but receive fewer services and distributors pay still another price and receive still another set of services. These services include such things as product transportation and delivery to a service station, use of the Marathon credit card, benefits from Marathon's brand advertising and identity, and assistance from its professional sales force.

In every case, the price paid by a Marathon branded independent marketer would exceed that paid by a private brand customer in the same geographical area. The higher prices charged to branded customers are economically justifiable -- such customers receive more in value than just the product.

Marathon markets gasoline in this manner because it believes that the gasoline market is segmented, consisting of two major parts: one composed of motorists who want and are willing to pay for the full range of services traditionally available at a full service station; the other is composed of motorists who are price conscious and willing to forsake service in order to benefit from a lower price. Marathon believes that since the market is segmented, then it, as a supplier, must differentiate its methods of sales to satisfy its customers.

Following the 1973-1974 Arab oil embargo, the buying habits of many consumers changed dramatically in response to rapidly escalating crude oil costs and resultant gasoline prices. The no-frill, low-price style of marketing expanded rapidly as consumers searched for lower gasoline prices. However, the data indicate that by 1976 the gasoline market had stabilized as consumer demand for no-frills, low-priced gasoline sales became satisfied. In Marathon's case, the number of branded outlets, now totaling about 2,100, has shown little change over the past three years and the number of secondary brand outlets, totaling approximately 731, has also been practically unchanged. Gasoline sales volumes also reflect this market equilibrium. For example, Marathon sold more gasoline in 1979 than it did in 1978. Of that increase, 65% went to independent marketers; 25% to Marathon branded customers; only 10% to secondary brand outlets.

Marathon is actively seeking new Marathon brand dealers. It has approximately 28 locations within its five state Marathon brand marketing area available for lease. It has been actively adding Marathon brand distributors in the same marketing area. These new distributors have generally been existing businesses who were looking for a new supplier because their former supplier wanted to withdraw from this market.

Between 1975 and 1979, Marathon was able to offer for sale more gasoline than required by its base period obligation. This so-called "surplus" gasoline was offered on a uniform basis to all of Marathon's customers, whether branded or unbranded and irrespective of any equity interest of Marathon. Thus, all its customers could secure additional volumes from this "surplus." Since the new DOE base period became effective in March 1979, despite reduced supplies of crude oil caused by the Iranian situation, Marathon has been able to maintain a 100% allocation fraction -- one of the few refiners in the country to do so. However, to accomplish this, it has had to purchase gasoline on the open "spot" market at high cost. It has done so because of its basic marketing philosophy -- to satisfy to the maximum extent practicable the demands of its customers.

In keeping with this same philosophy, Marathon has adopted the policy of being a willing supplier to all fair and reasonable requests for increased allocations from its existing customers. However, DOE regional offices have been less than expeditious in acting on applications for increased allocations, acting to date on only about 25% of the applications filed since 1978. Responding to this administrative insensitivity to the needs of its customers, Marathon recently filed with the Office of Hearings and Appeals of DOE a consolidated application for exception, seeking on behalf of a number of Marathon branded marketers increased allocations.

Marathon believes that the gasoline price and allocation regulations have worked to the detriment of all marketers and of most motorists. The rules have been particularly harmful to dealers who have single unit operations and are often without the reserves and facilities to protect their own interests fully.

While Marathon has been identified as an aggressive marketer through company operated stations, the Marathon statistics mentioned earlier (pages 1, 4) are consistent with the national pattern. According to the National Petroleum News (NPN), the total number of service stations in the

United States went from 226,459 in 1972 to 170,624 in 1979; however, the rate of decrease slowed significantly -- to less than 1% -- in the past three years. This stabilization in the marketplace reflects the fact that consumer demand for the low-priced gasoline outlet is being satisfied. Whether this market equilibrium will continue in light of the present economic situation or whether consumers will begin to patronize in even greater numbers those outlets with the lowest priced gasoline is problematic. Economic circumstances may well persuade some consumers that they no longer can pay the price to take advantage of the service offered by the full service dealer. Nevertheless, Marathon believes that there will continue to be a place in the market for the full service dealer and is firmly committed to a marketing strategy which includes the continued provision of support services to that type of marketer.

It must be remembered, however, that the consumer, and only the consumer, will determine who will survive in the retail marketplace. The proof of that statement can be seen in data from the preliminary report, dated December 11, 1979, of the DOE's Office of Competition furnished to the subcommittees. According to the DOE report, the top 28 refiners increased their company operated outlets from 10,271 to 11,551 between 1972 and 1979. This 1,334 unit increase, regardless of size or efficiency, cannot replace the 55,835 outlets that disappeared from the gasoline marketplace (according to NPN) during that same seven-year period. These data do not support the charge that refiner operated outlets are driving independent dealers out of the gasoline marketplace.

In summary, allegations that Marathon has a strategy to drive its independent branded dealers out of business are completely unfounded.

- Marathon offers dealers, at their choice, a one or three year lease.
- Marathon's credit terms have remained essentially unchanged since 1972.
- Marathon has maintained a 100% allocation fraction, doing so by frequently purchasing gasoline on the spot market at substantial cost.
- Marathon does not prescribe or control a dealer's hours of operation.
- Marathon has entered into 168 leases with new dealers since January 1, 1977, a statistic hardly consistent with a strategy to displace independent dealers.
- Marathon did not change dealer lease rentals until 1978, well after the time when most dealer reductions had occurred and even now, Marathon's subsidiary pays higher rentals than do lessee dealers.
- Except for a few isolated cases -- fewer than 10, and for cause -- Marathon has not unilaterally cancelled any dealer leases since 1973.
- Marathon implemented a fair and equitable voluntary allocation program for all classes of trade prior to the government mandated allocation program.

Marathon believes that the decline in the number of independent full service dealers has resulted from several factors:

- Federal regulations, both price and allocation.
- A shift in consumer buying habits from brand loyalty to the lowest price on the street which is usually found at self-service outlets.

- The proliferation of specialty auto service stores which compete directly with a dealer's "back room" of service bays.
- The impact of inflation throughout the economy.

## THE PROPOSED LEGISLATION - H.R. 6722

Marathon believes that H.R. 6722 is founded upon a basic misunderstanding of the retail gasoline market. Because of this faulty conceptual basis for H.R. 6722 as well as problems inherent with its substantive provisions, Marathon is opposed to H.R. 6722 in its entirety.

1. Divorcement -- Section 3(a)(1) would make it unlawful for any refiner, other than an independent or small refiner, to operate a motor fuel service station in the United States. This section would require Marathon to cease company operation of 731 retail outlets. If this provision were enacted, Marathon would be faced with the alternatives of selling or leasing those facilities to other operators not subject to the bill's prohibition or converting them to another use.

If the first were chosen, one must remember that dealers are ill-suited to engage in high volume, low margin operations and could not be expected to sell appreciably more gasoline, on average, than they currently do. Full service dealers, because of higher costs -- overhead, labor, rental, equipment and others caused by the types of facilities they operate and the services they offer -- require a higher per-gallon margin than high-volume operations. This impairs their ability to meet the prices of outlets that offer "no frill", low margin, gasoline-only marketing and consequently, their ability to sell large volumes. Though there may be exceptions to prove the rule, dealers operating single outlets are unlikely to be able successfully to abandon full service and operate in the high volume, low margin, gasoline-only mode. Those attempting it would face a high degree of risk in today's market which features motorists who are clearly divided as to how they prefer to buy gasoline. Without income from repair and service work and unable to spread the risk over multiple outlets, they would face a very tenuous future competing against mass merchandisers, highly aggressive chain operations and convenience stores better able to withstand market fluctuations and economic shocks. Any temporary upset in market conditions could be extremely injurious to such dealers, while operators with numerous outlets would not be as significantly harmed. Many dealers in such a situation would not survive.

For Marathon to replace, on a volume basis, sales of the approximately one billion gallons of gasoline sold in company operated outlets with sales to dealer operated outlets averaging 30,031 gallons per month (DOE Petroleum Market Share Report, January 1980) would require an addition to Marathon's branded distribution system of almost 2,800 new outlets, more than double the existing population of branded outlets. The capital required would be overwhelming and probably not justifiable, particularly in view of forecasts of declining gasoline demand in the 80's. Moreover, it is highly unlikely that zoning and other regulatory requirements for such a massive construction program could be met.

Sale or lease of Marathon's company operated outlets would obviously force Marathon out of the low margin high volume segment of the retail market. By whom would it be replaced? If not by dealers, who are not well situated to compete in that segment of the market, then it would be replaced by chain retailers, who will continue to provide what the consumer demands -- low priced gasoline. In this exchange, the dealer would have gained nothing. The low priced outlets which he claims will drive him out of business would still be there. The only difference would be the identity of the owner of those low priced outlets; it would no longer be a large oil company. That, however, could be small solace for the dealer.

It is a fact of life that higher gasoline prices have appreciably changed the way many consumers buy gasoline and that many dealers have suffered economic failure as a result. There is no law -- including H.R. 6722 -- that can change consumer preferences. So long as high-volume, low-margin outlets remain, under whatever ownership and by whomever operated, those consumers who prefer lower price to greater services can be expected to patronize them. Therefore, full service dealers would simply receive no benefit from H.R. 6722.

Aside from any benefit to dealers as a class, it has been argued that retail marketing divorcement legislation such as H.R. 6722 would foster competition in the retail marketing of gasoline. In fact, H.R. 6722 would lessen competition. This forseeable effect of H.R. 6722 and similar proposals has been consistently predicted by those agencies of the Government charged with the preservation of competition and protection of the consumer.

John H. Shenefield, then Assistant U.S. Attorney General, Antitrust Division, Department of Justice, testifying in January 1979 on a divorcement bill similar to H.R. 6722 stated: "Indeed, the very breadth of this legislation suggests that its effect would be to restrict rather than promote competition. As I have indicated, the available evidence does not indicate that divorcement legislation is needed to protect independent dealers from the allegedly uncompetitive actions of large integrated oil companies. There is, however, substantial reason to believe that such legislation might be perceived by dealers as an effective means of eliminating part of the competitive threat posed by the recent trend towards gas-and-go operations."

The Federal Trade Commission, in testimony before the subcommittee on May 20, 1980, questioned the wisdom of divorcement: "...(i)t is unclear whether the retail divorcement provisions of the bill, which would eliminate an entire class of competitors (i.e., the company-owned retail operation) are warranted, particularly when more limited remedies than absolute divorcement may provide much of the competitive protection sought by divorcement advocates."

The DOE's Office of Compeition, in the first phase of the Title III study mandated by Congress pursuant to the Petroleum Marketing Practices Act of 1978, found inter alia:

> "(1) There is no massive movement toward company store operations by refiners.
>
> (2) All refiners are not alike. Independent refiners have tended to increase their company stores and decrease their dealer direct sales, although the absolute volumes are small.
>
> (3) The decline in the share of sales to dealers must be viewed in conjunction with the relative share increases experienced by branded jobbers and independent marketers, an increase which has been greater than that shown for refiners' company store operations in every year since 1973.
>
> (4) The acquisition pattern for gasoline by refiner/marketers has been relatively stable since 1972. The only source of product to show a significant increase which may indicate an increase in brokering activity.
>
> (5) The hypothesis that the major refiners channeled substantial quantities of gasoline away from their dealer network into their company stores can be rejected."

To press forward with enactment of H.R. 6722 in view of these statements would be both unwarranted and counterproductive.

2. Right of First Refusal -- Section 3(a)(2) of the bill would require that a dealer be given the right of first refusal to purchase "any interest" in the service station operated by the dealer before the station could be disposed

of by the refiner. The dealer could accept an offer to purchase the interest on terms specified by the refiner or counteroffer with a different price. The refiner could accept the dealer's counteroffer or offer to sell at a price to be determined by an appraisal made pursuant to regulations issued by the Federal Trade Commission. Section 3(a)(2) would lack mutuality in that while there would be no obligation upon the dealer to purchase at the appraised price, there would be on the refiner. The dealer would, therefore, not really be accorded a traditional right of first refusal. He would not have to meet the initial offer made to the refiner. He could force the refiner to sell at the price fixed by an appraiser which may not be based upon the highest and best use of the property or its value as an on-going concern. This could materially detract from the value received for the property by the refiner. Thus, the refiner could be unfairly, and perhaps unconstitutionally, deprived in part of the value of his property.

Section 3(a)(2) does not take into account the protections presently afforded to both dealers and refiners under the Petroleum Marketing Practices Act relating to the termination of "franchise relationships." Given these protections under existing law, requiring a refiner to extend an offer to purchase to a dealer is unnecessary as well as unwise.

3. Refiner Sales Ratio -- Section 3(b)(1)(A) would establish a state-by-state volume limitation on sales by

small and independent refiners through company operated outlets through a "refiner sales ratio." Essentially, a refiner could not sell a higher percentage of motor fuel in a given state through company operated outlets than it did in 1978.

As an alternative restriction, Section 3(b)(1)(B) would establish a limitation on the volume of motor fuel salable at refiner operated outlets in a state through the use of the more restrictive of two formulas. This limitation would be the lesser of (i) 50% of the excess of the refiner's total motor fuel sales within the state over the refiner's total 1978 United States refiner operated sales or (ii) the excess of total sales of motor fuel by the refiner in that state over the refiner's total 1978 United States refiner operated sales, multiplied by the refiner sales ratio in the state for the year involved, plus, in either case, the refiner's total sales in 1978 in the United States through refiner operated stations.

The volumetric limitation of Section 3(b)(1)(B) will not affect any refiner unless and until that refiner's sales in a given state exceed its total 1978 United States refiner operated sales. Until that volumetric threshold is reached there is no excess to which the formulas can be applied. Therefore, the limitation upon retail sales by existing refiners under Section 3(b)(1) may be largely illusory.

The principal effect of the volume limitations of

Section 3(b)(1) may be to exclude from the marketplace any new refiner-marketer, since no refiner could sell at retail more motor fuel in any year than was sold by it in 1978, either absolutely or on a percentage basis. It is clear that under the bill's language a refiner who marketed no motor fuel at retail in 1978 could not integrate forward into retail marketing. It is less clear, but certainly arguable, that a marketer who was not a refiner in 1978 could not under the bill integrate backward into the refining segment and if a marketer could do so, then the bill would unfairly discriminate against small and independent refiners as a class. If the bill would have the effect suggested, then it would certainly be anticompetitive, as it would protect existing refiners and marketers from the competition of new entrants.

4. Rack Pricing -- Section 3(c)(1) is apparently intended to establish a so-called "rack pricing" provision. It would provide, basically, that a refiner could not charge a different price to customers purchasing motor fuel at the same place and time and in the same "basic units," unless any difference were cost justified. Aside from considerations of good faith efforts to meet competition, competitive injury and the jurisdictional necessity of an interstate sale, Section 3(c)(1) largely duplicates what is already provided for in the Robinson-Patman Act. Consequently, the provision is unnecessary, insofar as it proscribes the same conduct as is proscribed by the Robinson Patman Act, and is unduly

burdensome on competition and restrictive of bona fide marketing strategies, insofar as it prevents response to competitive prices and precludes pricing differences having no adverse competitive effects. Additionally, as the bill omits the "like grade and quality" requirement of the Robinson-Patman Act and applies to motor fuel generically, it could produce such absurd, and presumably unintended, results as forcing premium and regular grade gasolines and all grades of diesel fuels to be sold at the same price. It could, moreover, force out of the distribution chain middlemen, such as jobbers, who perform valuable economic services and whose purchasing prices normally reflect those services.

Marathon has no quarrel with any supplier of motor fuel voluntarily adopting a rack pricing concept. It does object strenuously to a law which would mandate the adoption of this or any other particular pricing method by all suppliers. If the DOE price regulations have had any benefit at all, it is to teach that a pricing regulation that forestalls diversity of marketing strategy and injects an artificial rigidity into the marketplace has an infinite capacity for the production of unintended mischief. In the case of the DOE regulations, the mischief has taken the form of misallocated supplies of gasoine and other products and unfairly distributed regulatory burdens which have driven many dealers out of business. The unintended mischief of Section 3(c)(1) could be to eliminate branded marketing and to drive the jobber out of the distribution chain.

5. Open Supply -- Section 3(d) is apparently intended to permit a dealer, without regard to his brand association, to purchase motor fuel from any supplier, provided the dealer gives reasonable point of sale notice to purchasers. As a potential effect of this provision is the elimination of branded marketing, the "open supply" concept has enormous implications for trademark and product liability law.

The body of statutory and case law that has built up concerning the use of trademarks is extensive. It embodies the wisdom of many decades of experience. Yet, Section 3(d) of the bill would directly attack the collective wisdom of that body of law with no consideration for the implications of doing so and no factual foundation for the need to do so. At the very least, before the subcommittees recommend the passage of a law which could undermine the very foundation of brand marketing, they should be certain beyond doubt that the need for such action is compelling.

Marathon also objects to the open supply provisions of the bill because they raise questions of (1) increased and uncertain liability of suppliers under environmental, trade regulation and product liability laws due to potential contamination of trademarked products, (2) dissipation of valuable trademark property rights and deception of the motoring public through the passing-off of non-trademarked products and (3) misappropriation of the right to use credit cards and other brand services without compensation. For example, the bill would leave unresolved such potential issues as the effect of commingling by a dealer of leaded and unleaded gasoline upon the liability and obligations of a refiner leasing a station to the dealer and the duty, if any, of the refiner to determine and certify the octane rating of gasoline contaminated by the introduction by a dealer of non-trademarked product. In addition, the bill would raise potential issues of preemption of state laws prohibiting commingling of trademarked and non-trademarked products and it would cast doubt on both the rights and duties of a trademark owner to police the proper use of the mark under the Lanham Act and other laws pertaining to trademarks and the respective rights and duties of refiners and dealers under the termination provisions of the Petroleum Marketing Practices Act.

## SUMMARY

In summary, Marathon believes that the probative evidence of abuse of dealers by their suppliers is simply not present. While many allegations and accusations concerning such abuses have been made, they do not stand the test of hard proof. As shown by the study under Title III of the Petroleum Marketing Practices Act and testified to by the head of the DOE's Office of Competition before this subcommittee on May 20, 1980, there is no justification for the far-reaching restructuring of the gasoline marketplace contemplated by H.R. 6722. To the contrary, the hard evidence suggests that all parties concerned -- suppliers, dealers and consumers -- are better off without this proposed legislation.

For the foregoing reasons, Marathon believes H.R. 6722 is ill conceived and unwarranted and opposes H.R. 6722 in its entirety.

**EXHIBIT 8: MEADVILLE CORPORATION**

## THE MEADVILLE CORPORATION'S MEMORANDUM CONCERNING CERTAIN PROVISIONS OF H.R. 6722 DEALING WITH THE OPERATION OF MOTOR FUEL SERVICE STATIONS

This memorandum is submitted on behalf of The Meadville Corporation ("Meadville") to provide information, comments and suggestions regarding H.R. 6722, the Small Business Motor Fuel Marketer Preservation Act ("the Bill"). It is directed to those provisions of the Bill which prohibit the operation of motor fuel service stations by refiners, and in particular, to the definitions of "producer" and "refiner" set forth in Section 3(f)(1) through (6).

Meadville is one of the "interstate marketers of petroleum that own and operate their own retail gasoline stations" referred to by the United States Supreme Court in Exxon Corporation v. Governor of Maryland, 98 S.Ct. 2207, 2214 (1978). Meadville is a New Jersey corporation; its sole business is the ownership and operation of a chain of gasoline stations through wholly-owned subsidiary corporations. It sells gasoline to the general public at these stations under the trade name "Merit" which it owns and controls. Meadville is not itself a "producer" or "refiner" under subsections 3(f)(1)(A) and (2)(A) of the Bill. Moreover, Meadville does not hold a "significant ownership interest" in any producer or refiner as that term is defined in subsection 3(f)(6).

Meadville has one class of stock, and all of the shares have voting rights. Forty-nine percent (49%) of the stock is owned by Amerada Hess Corporation ("Amerada Hess"), a producer and refiner within the meaning of the Bill. However, the other 51% of Meadville's stock is held and controlled by a Voting Trust which does not expire until 1990 and which can be extended beyond that date by appropriate amendment. As a result of this Voting Trust and other arrangements referred to below, Amerada Hess cannot elect a majority of Meadville's directors and has never directed or controlled Meadville's operations or has had the capability of doing so.

Despite this, as the Bill now stands, Meadville would be a "related person" with respect to Amerada Hess because the latter owns more than 5% in value of Meadville's outstanding stock. Hence, Meadville would be lumped with Amerada Hess and would be treated as a "refiner", and under the provisions of subsections 3(a)(1) and 3(f)(12), Meadville would be prohibited from carrying on its present business.[1/]

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[1/] Based upon the information available to Meadvile, Amerada Hess is not a "small refiner" as that term is defined in subsection 3(f)(4). Meadville does not have information from which it can determine whether Amerada Hess is an "independent refiner" under subsection 3(f)(3).

A major purpose of this Bill is to create conditions under which the independent retailer of motor fuel will be able to compete on a fair and equal basis in the marketplace. It would be unfortunate, indeed, if Meadville, which truly performs the function of an independent retailer, were to be barred entirely from the marketplace to the detriment of the consuming public as well as itself. If Meadville were barred, it would be out of business entirely since retailing is its sole activity.

## 1. HISTORY OF MEADVILLE

The Meadville business was formed in 1930 by the late Max Levinson. Mr. Levinson was associated with six other persons: his brother, the late Ralph Levinson; his brother-in-law, the late Saul Meltzer; another brother-in-law, Joseph J. Gabel; a nephew, Morton Sand; a niece's husband, Samuel Bass; and the late Allen Tint. These seven men and members of their families, with minor exceptions, have been Meadville's stockholders for decades, and they or their families are today the beneficial owners of almost all of the shares of Meadville not owned by Amerada Hess.

From its inception, Meadville has owned and operated a chain of gasoline stations at which it has ordinarily sold gasoline to the general public at prices lower than the prices charged at stations carrying the primary brand gasoline of refiners. Starting in 1949, Meadville was a pioneer in the operation of supermarket-type service stations, that is, stations having more islands and pumps than the usual stations selling the primary brand gasoline of refiners. Many years after Meadville's introduction of the supermarket discount gasoline station, the refiners began to copy this concept. This generally took the form of selling gasoline at discount prices under secondary brand names (such as Exxon's "Alert"; BP's "Gas and Go"; Continental's "Kayo"; and Ashland's "Bi-Lo" and "Pay Less") owned by the refiner at stations wholly owned by the refiner either directly or through wholly owned distribution subsidiaries.

In 1958, Hess, Inc., a privately owned corporation led by Leon Hess, was Meadville's supplier. Hess, Inc., offered to buy 25% of the outstanding Meadville stock under an arrangement which would give it an option to purchase an additional 24% within a stated time. This offer met the needs of the then stockholders of Meadville for improved personal liquidity, but they were unwilling to part with control of Meadville and were intent upon preserving its independence.

The Hess, Inc., offer was accepted, and the closing with respect to the sale of the initial 25% block of the Meadville shares took place on January 15, 1959. At the same time, a Voting Trust agreement was entered into by all of the stockholders of Meadville other than Hess, Inc. (the "Levinson

Group") to insure that control of Meadville would remain with the Levinson Group and an agreement restricting the transfer of Meadville stock and of the Voting Trust certificates was also executed. These agreements, with the modifications noted below, have remained in effect. In December, 1961, the Hess, Inc. option to acquire the additional 24% of Meadville stock was exercised. Since then, the Voting Trust has held 51% of Meadville's stock. The remaining 49% is now owned by Amerada Hess, the successor in interest, through mergers and/or acquisitions, of Hess, Inc.

Initially, the Voting Trust was for a term of ten years, the longest period then permitted under the New Jersey Business Corporation Law. Four trustees from among the principals of the business were designated, namely, Max Levinson, Joseph J. Gabel, Samuel Bass and Morton Sand, and provisions for their succession were set forth. The expiration date of the Voting Trust was extended from time to time during the initial ten year term, and in 1969, when a revised Business Corporation Act was adopted by New Jersey which permitted a voting trust for a period of 21 years, a new Voting Trust agreement dated April 15, 1969 was entered into by the Levinson Group for a term to expire on January 31, 1990.[2/] Max Levinson,

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[2/] Under Section 14A:4-20(4) of the Act, at any time within two years prior to the time of expiration of any voting trust agreement as originally fixed or as extended, its duration may be extended for an additional period not exceeding 21 years.

Morton Sand, Joseph J. Gabel and Samuel Bass were again named as trustees.

On September 29, 1976, the Voting Trust agreement was amended to guarantee that the family group of each of the seven associates who founded the business would be represented by a trustee. This was accomplished by providing for seven trustees, one from each family group, each of whom was empowered to designate a successor from his or her family group. The present trustees of the Voting Trust are Messrs. Sand, Gabel and Bass, three of the original trustees; Carl Levinson, a son of the late Max Levinson; Libby Moroff, a daughter of the late Ralph Levinson; Harold Tint, the son of the late Allen Tint; and Melvin J. Nelson; the son-in-law of the late Saul Meltzer. Thus, the trustees today are the three survivors of the original seven principals and the children and a son-in-law of the deceased principals. These are the persons who control Meadville.

As previously noted, from the time of the very first acquisition of Meadville stock by Amerada Hess' predecessor in interest, there has been an agreement restricting the transfer of the stock beneficially owned by the Levinson Group. The purpose of this agreement is to preserve Meadville's independence by forestalling any attempt by Amerada Hess to gain control of Meadville's operations by acquiring additional shares of its stock. This agreement prohibits the transfer of Levinson Group stock without first offering it to other members of the Levinson Group.

## 2. NATURE OF MEADVILLE'S OPERATIONS

Although it owns 49% of Meadville's outstanding stock (which it has the right to vote cumulatively, under Meadville's By-Laws, in the election of directors), Amerada Hess does not now, and never has, controlled Meadville. Because the other 51% of Meadville's stock is controlled by the trustees under the Voting Trust agreement, Amerada Hess does not have the power to elect a majority of Meadville's Board of Directors. The Voting Trust agreement, as it now stands, will not expire until January 31, 1990, and it may be (and, in all probability, will be) extended for additional periods of 21 years each. Hence, for all practical purposes, Amerada Hess could not gain the power to elect a majority of Meadville's directors in the foreseeable future. Moreover, Amerada Hess does not direct, influence or in any way affect, the operating policies or management of Meadville in any other manner.

Currently Meadville's Board of Directors is composes of nine members. One of these, Harold N. Gast, is a former director and officer of Amerada Hess, now retired; Mr. Gast does not own or hold any stock of Meadville in any capacity. No other director of Meadville is or was an officer or director of Amerada Hess.[3/] If Meadville, its directors, officers and employees, the trustees of the Voting Trust and the Levinson Group are treated as a single, unified association or entity, they do not hold any interest approaching a "significant ownership interest" (within the meaning of subsection 3(f)(6) of the Bill) in Amerada Hess or any other producer or refiner.

From a purely functional standpoint, as well as from a legal standpoint, Amerada Hess does not "operate" or control the "operation" of the service stations owned by Meadville at which the latter sells gasoline or other "motor fuel" (as defined in subsection 3(f)(7) of the Bill) to general public. Delivery of these products to the stations is carried out by Meadville.

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[3/] The other eight directors are six of the seven trustees of the Voting Trust (all but Libby Moroff), Ivan Gabel (the executive vice president of Meadville and the son of Joseph J. Gabel, one of the trustees) and Joseph M. Jerome (the president of Meadville).

The gasoline is sold under the brand or trade name "Merit" which Meadville owns and controls and which it alone advertises and promotes with its own funds.

Decisions regarding site selection, station design, the product mix between gasoline and other "motor fuel", the sale of auxiliary items and services, the employment and supervision of station personnel, the days and hours during which a station is to be open for business, and, most importantly, the price at which gasoline and other "motor fuel" is to be sold to the public are made by Meadville personnel independently and without consultation with or direction by Amerada Hess. Meadville does not receive any financial assistance from Amerada Hess.

The one connection which Amerada Hess has with the business of Meadville is that it is Meadville's principal supplier of gasoline. For many years, there was a succession of supply contracts between the two. This relationship has been marked, from time to time, by expressions of dissatisfaction by Meadville concerning the prices charged by Amerada Hess and the latter's failure to supply Meadville with an adequate amount of gasoline. The last supply contract expired on December 31, 1978, and Amerada Hess has refused to enter into a new one.

Nevertheless, because of the allocation provisions of the Emergency Petroleum Allocation Act, 15 U.S.C. §§ 751 et seq., and the regulations thereunder, Amerada Hess has continued to be Meadville's principal supplier of gasoline. Meadville also obtains gasoline from Exxon Corporation, Cities Service Oil Company, Sun Oil Company and Martin Oil Company and has made spot purchanges from a few companies, such as Northeast Petroleum Company, Supreme Oil Company, Commonwealth Oil Refining Company and foreign sources.

Much of the gasoline refined by Amerada Hess reaches the general public under the brand or trade name "Hess" which is owned, controlled, advertised and promoted by Amerada Hess. Meadville stations selling "Merit" gasoline compete as fully with these "Hess" stations, some of which are located nearby the Meadville stations, as with other non-Meadville stations.

From all of the foregoing, it is clear that there is not a pervasive community of interest between Meadville and Amerada Hess. By all relevant criteria, Meadville is an independent retailer, and the Bill should be revised to preserve its continued existence in business.[4]

### 3. SUGGESTED DEFINITION

The divorcement provisions of the Bill (and the refiner sales ratio limitations) are directed at the growing concern with the downstream vertical integration of the refiners into the retail level of the market. This has generally been accomplished by refiners selling their primary brand or trade name gasoline through salaried or managed retail outlets which they own or by creating or adopting secondary brand or trade names for their gasoline which is then sold under those names through wholly owned subsidiaries.

It is evident that Meadville is not and would not be a part of any vertical integration by Amerada Hess or the beneficiary of any resulting advantages. Nevertheless, under the 5% financial interest test of the Bill as it now stands, Meadville would be swept into the divorcement provision of subsection 3(a)(1) or at the very least, would be made subject to the refiner sales ratio limitations of subsection 3(b)(1). It should not be subjected to either penalty.

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[4] If Amerada Hess could qualify as an "independent refiner" under the Bill as it now stands or under some revision of the definition of that term, Meadville could continue its present business. However, it would then be treated as an "independent refiner" because of the stock owned by Amerada Hess, and its business would be unduly hampered and burdened by the "refiner sales ratio" limitations of section 3(b). Because of its independence from Amerada Hess, Meadville should not be considered a "refiner" in any sense.

A less than majority interest in a corporation may, in some industries, provide some measure of control. This is not so, however, in the retail gasoline business; there just are not large public corporations with many shareholders engaged exclusively in the retail sale of gasoline. Companies engaged solely in the retail sale of gasoline are, essentially, privately owned and for a refiner to acquire control, it would have to have more than 50% of the voting stock.

Accordingly, Meadville suggests the following definition for incorporation in the Bill:

> "A corporation, which is not itself a producer or refiner and holds no significant ownership interest in a producer or refiner and which owns one or more motor fuel service stations, directly or through one or more wholly owned subsidiary corporations, and sells gasoline thereat under its own brand or trade name, is a related person with respect to a producer or refiner if the producer or refiner owns more than 50% of the outstanding voting shares of the corporation."

**This definition will most accurately reflect the realities typified by the Amerada Hess-Meadville situation. It will enable Meadville, and any comparable corporation, to continue in its present business to the benefit of the consumer, without so weakening the Bill as to frustrate its principal objectives.**

**May 28, 1980**

## EXHIBIT 9: MOBIL OIL CORPORATION

**Mobil Oil Corporation**

SUITE 820
1100 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036

June 12, 1980

The Honorable Berkley Bedell
Chairman, Subcommittee on Antitrust
and Restraint of Trade
House Small Business Committee
Washington, D.C. 20515

The Honorable James Scheuer
Chairman, Subcommittee on Consumer
Protection and Finance
House Interstate and Foreign Commerce
Washington, D.C. 20515

Dear Messrs. Bedell and Scheuer:

Enclosed please find a copy of the statement of the Mobil Oil Corporation on H.R. 6722, The Small Business Motor Fuel Marketer Preservation Act of 1980.

We would greatly appreciate your making this statement a part of the record of the hearings on that bill.

Sincerely,

Barney J. Skladany, Jr.
Assistant Manager,
Government Relations

BJS:mv

Enclosure

Statement of

MOBIL OIL CORPORATION

On H.R. 6722

Small Business Motor Fuel Marketer

Preservation Act of 1980

Submitted to the

HOUSE SMALL BUSINESS SUBCOMMITTEE ON ANTITRUST

and the

HOUSE INTERSTATE AND FOREIGN COMMERCE SUBCOMMITTEE

ON CONSUMER PROTECTION

UNITED STATES HOUSE OF REPRESENTATIVES

June 11, 1980

Mobil Oil Corporation welcomes the opportunity to present its views on the Small Business Motor Fuel Marketers Preservation Act, H.R. 6722 and related bills.

At the outset, we would like to assure you that Mobil is as concerned about the continuing vitality of independent dealers and their contribution to consumer services as are members of the Congress. Mobil has always operated a large majority of its retail outlets through independent dealers and plans to do so in the future. We have long recognized the importance of the independent dealer in successfully retailing our products. As such, we have worked hard, and we believe successfully, to build and sustain a positive business relationship with our dealers. A relationship built on trust and respect.

Before commenting on the specifics of the proposed legislation we would like to briefly review trends over the past several years in service station marketing and then comment on a few statements made in recent hearings on H.R. 6722.

It is true that many dealers have gone out of business in the past several years. However, this is not the result of predatory actions by refiners as has been alleged - it is the result of market forces brought about by fundamental changes in the availability and price of crude oil, changing consumer demands and government controls. It may be helpful to cite some examples of how the market has changed and continues to change.

Changing demographics have brought new roads such as the interstate highways, new shopping centers and communities. The service station business like other businesses had to adjust to these changes. Accordingly, to acommodate the changes, new stations were built and other stations, such as those stranded by the opening of new interstate or primary roads, became uneconomical for the dealer as well as the supplier and were forced to close. During the 70's, we witnessed the advent of the do-it-yourself service stations which ultimately proved to be extremely popular with the motoring public. This happened at many retail outlets including grocery stores, department stores, bookstores, and service stations. This type of merchandising, utilizing good management, resulted in increased profits through reduced operating costs (labor and related overhead) and increased sales by the capability to lower prices in order to attract new customers. As indicated, the concept of self-service caught on about eight years ago and since that time it has expanded rapidly across the nation because of benefits to consumers. Unfortunately, as happens in a competitive marketplace, it also caused some businesses to fail. In the process of change, we have seen throughputs in many self-service stations double and then redouble. It has resulted in more successful but fewer dealers. Some full-service station dealers recognize that with more self-service outlets they have less competition for other types of service rendered to the motorist. That is, they have concentrated on automotive services and repairs. On the other hand, those dealers who chose to expand gasoline volume and profits with self-service outlets shut down service bays in order to cut overhead. Later, many found alternate profit opportunties with these closed bays by converting them to drive through car wash facilities, convenience stores or other types of retail store operations which complimented the concept and operation of gasoline self-serve facilities.

Compounding the dealers' problem with changing customer demands, were the advent of price controls in 1971 and then product allocation controls in 1974. These government controls led to the situation we have today where suppliers' gasoline prices necessarily vary by as much as 19¢/gallon and retail prices vary even more as dealer margins and "company store" margins are fixed, by price controls, but at different levels. Since supplies were limited during some of the intervening years and particularly in 1974 and 1979, dealers, for the most part, could sell all of the product they were allocated and, in addition, price their product to obtain the maximum gross profit margin allowed by law. Under these conditions of fluctuating supply and constrained price, many dealers were profit motivated to lower operating expenses by converting to self-serve. Other dealers, however, supplied by high-priced suppliers (because of price control mechanisms and the impact of entitlements) were priced out of the market and even during periods of limited supply had to stay open longer hours to sell their products. Their situation became worse when supply was plentiful because these dealers were still priced out of the market and had difficulty in marketing their normal volumes of product. In many cases, having failed to change their marketing tactics to cope with their higher costs and changing consumer demands, they chose to either close their station or, upon expiration, non-renew their lease.

Meanwhile, companies such as Mobil, who had built primarily conventional service stations and leased them to dealers also had to change with the market or lose to competition. We had to find out how to best construct and then successfully operate these self-serve types of units in order to ultimately help our dealers do so. To do this, we found it necessary to expand company operations during the 70's. We built and tested many new types of facilities from pure self-serve outlets with no bays, to self-serve with supplemental profit centers such as convenience stores, snack shops and car wash facilities. These company operations, however, had to operate under different price control regulations, the practical effect of which, was to, at times, hold refiner operated retail prices generally to about 3¢/gallon less than independent dealers could charge.

As a result, therefore, of changing marketing methods and lower retail prices during those years when product supplies were plentiful, and not allocated at less than 100% of the DOE's base control period, many dealer and company-operated stations substantially increased their throughput. This in turn established what later became higher base-period volumes for these stations who had successfully converted to self-serve; who had chosen to more competitively price their products; who had benefited from population and other demographic changes and, for company operated stations, who had been induced by government regulations to price their products in many instances below the price posted by independent dealers. Those dealers, however, who chose to not change with the market, or who were priced out of the market by highway and demographic changes suffered from smaller profits as gasoline throughput dropped and expenses increased with inflation. As such, given other business or employment opportunities, many opted to leave the retail service station business. This exodus of dealers was heightened by supplier lease terminations, which resulted from the supplier being unable to economically justify renewing the underlying lease on the service premises from third party property owners who required higher lease payments for their property.

Thus, over the period of 1973-1979, a great number of smaller-volume and less profitable service stations closed. Those remaining, for the most part, offer much greater financial rewards to their operators than previously.

In order to further understand service station marketing trends, we have prepared and attach for your information several exhibits which provide data on Mobil's U.S. resale operations for the years 1972-1979.

Exhibit "A" shows the gradual decline of Owned and Leased stations, (Mobil owned in fee or leased from third parties which are leased to dealers or company operated), from 50.8% of total gasoline sales in 1972 to 46.7% in 1979, with absolute volume decreasing only slightly. "Open dealers", as you refer to them, remained relatively flat at about 19% of our business. Wholesale distributors or jobbers, however, increased dramatically from 18.6% and 1.2 billion gallons to 28.1% or 1.9 billion gallons; an explosive growth of 0.7 billion gallons or 58%, a growth achieved at the expense of all other classes of trade. This is due almost exclusively to DOE allocation regulations.

Exhibit "B" shows the decline of Mobil's Owned and Leased stations from 8,640 in 1972 to 5,586 in 1979. The category "Mobil Lease Terminations" is noted on this Exhibit to indicate the small number of Mobil initiated lessee-dealer lease terminations. The point is that dealers, not Mobil, initiate most lease terminations and this has been the primary factor in the majority of station closings; not any initiative on Mobil's part to convert them to company operations, as has been alleged by some critics. In fact, the Petroleum Marketing Practices Act of 1978 (PMPA) precludes such action except to the extent that the supplier is allowed to keep a unit open for business via company operation for a limited period of time when a dealer unexpectedly vacates a station, but only until a new lessee dealer is recruited, trained and installed. The Exhibit also shows the temporary growth during the mid-70's of Mobil's salary-operated retail outlets, as referred to earlier in this statement, from 364 in the base year 1972, to a peak of 664 in 1977, followed by a precipitous decline in 1978 and again in 1979 to 400 at year end. This can hardly be called an "aggressive marketing strategy emphasizing company direct operations" as has been alleged in the recent joint Subcommittee hearings held on the proposed legislation. Rather, because of new marketing methods such as car-wash and self-serve configurations and the lower selling price mandated by DOE regulations for company operations, throughput per station has on average just about doubled during this time.

The Subcommittee was also very critical of the direction the DOE is taking in its evaluation of the gasoline marketing industry as mandated by Title III of the PMPA. The Subcommittee's criticism in our judgment is unwarranted because of the substantial protection given to dealers under the Petroleum Marketing Practices Act. Several years back, after gasoline decontrol was recommended by the DOE, branded dealers sought Congressional action to protect themselves from potential "predatory" behaviour on the part of their suppliers. The dealers generally sought relief along two lines. First, they wanted some guarantee that their suppliers, who were also often their lessors, would be compelled, after decontrol, to continue with their supply agreements and leases. Second, they wanted protection from unreasonable competition from their suppliers at the retail level. The complaint of the dealers was that the refiners were using profits from refinery and crude production to subsidize retail sales at or below cost at company operations. The dealers' plea was not that the refiners be precluded from competing, but rather, that if a refiner competes, it should be allowed to do so only if it can generate a profit just like the dealers must in order to stay in business. Congress gave the dealers the protection they requested in Title I of PMPA with respect to continuance of their supply contracts and leases. Congress delayed the second relief element, reasoning instead that rather than accept as fact the allegations made by the dealers, it wanted an independent study of the situation and recommendations thereon. Therefore, they directed the DOE, in conjunction with the Department of Justice and the Federal Trade Commission, to undertake the study. Part I has been completed and shows that the dealer allegations were, in fact, untrue. Part II of the study is underway and before any additional action is taken by Congress, action which would irreparably damage the gasoline marketing industry, we believe it is only reasonable to wait for Part II to be completed. This second part will, among other things, address the present profitability of the dealer segment of the industry. We believe this study will show that, on the whole, dealers today are making a greater profit than at any time in history. We believe it would be very hard to reconcile such increased dealer profits with the claim of predatory activity by the major refiners.

The present profitability of dealers notwithstanding, there is obviously a concern by the members of the Subcommittee that a great potential exists for predatory action by refiners, particularly following the expiration of current federal regulations on price and allocation. Further, that present legislation is needed to defuse this potential. Chairman Bedell stated during the May 8 hearing, "Since the study (DOE Title III Study, Part I) has not done anything about predatory charges, which the refiner has the opportunity for, unless something is done, we have just given tremendous incentive for the refiner to adopt predatory pricing...". Mobil believes it would be a grave error for Congress to pass such a radical and revolutionary bill as H.R. 6722 simply because the potential for predatory action exists. We point out that this potential has existed in the past, and yet the major refiners chose to encourage the development of a large distribution network of independent dealers and distributors. We also point out that such a potential is not unique to petroleum marketing. Rather, it is present in many, if not most, industries. Potentially, nearly any manufacturer can set up his own retailing system and sell directly to the consumer, thereby putting intermediate retailers out of business. Yet, in the gasoline marketing industry, as well as virtually every other industry, the overwhelming percentage of retail sales have been, are being and will continue to be made through independent businessmen. Mobil cannot see the need for legislation such as H.R. 6722. What is the rationale?

We believe that H.R. 6722 is unwise and unnecessary legislation. Enactment could reduce competition and increase consumer cost. It could also lead to the gradual demise of branded marketing and, contrary to the stated objectives, pave the way for the demise of the lessee dealer. The best way to strengthen the dealer is to free him and his supplier from the stranglehold of price and allocation controls which are due to expire in October 1981. A return to the free market will cure the ills for those business people who are capable of operating their business in a competitive market; a market free of government subsidies. Those that want to lease from a branded supplier can do so, those that want to sell unbranded product can choose their supplier; those that want to grow and expand will find their opportunity. We can assure you that Mobil has no intent of trying to fill the role of the dealer. Frankly, we just aren't capable of operating thousands of small businesses across the country. The best we can do is select a few here and there of different types of facilities, keep our hand in so we can know and understand the business and in turn communicate this knowledge to our dealers and their employees through training programs, in clinics and in day to day counseling sessions. That is the job we can do best and want to continue to do.

In summary, dealers who resisted market changes, who were priced out of the market by price controls, or who were by-passed by the physical characteristics of the market were caught with low product allocations, particularly in 1974 and again in 1979. With their market limited, their margins controlled and inflation affecting their operating expenses, an abnormally high number of operators chose to close operations. Also, their suppliers, if they were leasing the land and station improvements from a third party, may have been unable to economically justify renewing the underlying lease on the property because throughput volumes were inadequate to carry increasing leasehold expenses.

While relief to the dealers in the form of discontinuance of pricing and allocation regulations is needed, there is no need for legislation that further controls the relationship between a dealer and his supplier/lessor. The branded service station dealer who leases his station from his supplier already enjoys more Congressional protection than virtually any other small businessman. In addition to the antitrust laws which already protect dealers from unfair competition, the branded dealer is now protected by the PMPA. Branded dealers are the beneficiaries of protection not enjoyed by non-branded dealers or even by non-lessee branded dealers. Under the PMPA, a branded lessee dealer of a major refiner is assured that his supply agreement and service station lease will be renewed, on reasonable terms, as long as the dealer meets his obligations under the franchise. Should a dispute arise between a dealer and his supplier/lessor, and litigation follows, courts are required to give the dealer a judicial preference not enjoyed by almost any other retailer/franchisee. If the court determines that a refiner/franchisor is at fault, the dealer remains in the station, plus he can recover his actual damages, punitive damages and attorney's fees. Under the PMPA, it is virtually impossible for a refiner to convert a lessee operation to a company operation unless the dealer, of his own accord, decides to terminate his relationship with the refiner.

Mobil finds it difficult to understand why the sponsors of H.R. 6722 now feel that even greater favors and additional insulation from competition should be bestowed at high cost to the consumer on this segment of the petroleum marketing industry. If, however, you wish to proceed, then we offer the following specific comments on the more significant sections of H.R. 6722.

Section 20 (a) (1) and 20 (b)

- Major refiners will be prohibited from operating "company stores"
- Small/independent refiners will be limited in company stores to that percentage ratio operated by state in the base year (even though the percentage may be 100%).

Discussion

The major refiners presently operate only a small percentage of their service stations with company personnel. DOE's PMPA Title III study, Part I, provides details on these operations and the trends. The evidence is substantial that:

1. Major refiners are not making a massive move to put dealers out of business.
2. Major refiners do not subsidize their salary-operated stations with upstream profits.
3. DOE price and allocation regulations have distorted the market apparently to the benefit of wholesale jobbers and unbranded independents.
4. DOE price and allocation regulations may have contributed to the restraint on growth or even the demise of some service station dealers.
5. Small and independent refiners company operate a much greater portion of their stations than do the major refiners.
6. Many small and independent refiners have substantially reduced the percentage of service stations operated by dealers.
7. Wholesale jobbers may have substantially increased the number of company operated stores.

Conclusion

There is no evidence to support the need for divorcement legislation aimed at the major refiners. There is evidence the proposed legislation would be unfair, lessen competition and increase consumer costs.

Section 20 (a) (2) (A)

- Refiners will be limited in the sale or transfer of any interest in a motor fuel service station to a dealer or to others after the dealer has been given a right of first refusal.

Discussion

Over the longer term legislation such as this can only damage the service station business and increase consumer cost. It could result in the forced sale of a high value property to a service station dealer for a very low price and deny the right of a property owner to receive a return on his investment. If not defeated in the courts, it could establish a precedent which could lead to similar legislation being passed to apply to other types of franchisor property owners.

Conclusion

There is no justifiable basis for this proposal.

Section 20 (c) (1)

- Prohibits a refiner from establishing different prices for motor fuel for any basic unit at any transfer point.

Discussion

The intent of this proposal may be to lower the cost of fuels to service station dealers. In concluding such, however, the economics and efficiencies of marketing and distributing products have been ignored. Middlemen have long played an important role in providing services between a manufacturer, a reseller and consumers. The gradual elimination of this function in many areas of the country would result, as these wholesalers would no longer have an operating margin. To a great extent such a proposal could also lead wholesalers into becoming "chain retail marketers". In other words, dropping their wholesale operations and taking over numerous service stations to operate as "company stores". Rack pricing would also bring about the gradual elimination of branded marketing as we know it today and with it the elimination of "franchising" lessee dealers.

Conclusion

The essence of a free enterprise system encourages competing methods of distributing and marketing. This proposal would drastically alter the distribution and marketing of petroleum in the United States. Marketing inefficiencies would result and higher not lower consumer prices would probably be the outcome. In addition, many competitors and independent business people would be irreparably damaged.

Section 20 (c) (2)

- Recognizes cost justification alone for different prices.

Discussion

This proposal would take away any practicable defense for price differences based on meeting competition and competitive activity now available under current law, Section 2(b) of the Robinson Patman Act.

Conclusion

This proposal, like others in this same bill fails to recognize the broader implications of free market philosophy and the essence of a free enterprise system. The Robinson Patman Act has been an essential factor in increasing competition in all types of business activities and has long served to reduce consumer costs. This proposal is unwarranted and could only lessen competition and increase consumer costs.

Section 20 (c) (3)

- Allows refiners to establish a uniform reasonable surcharge for the use of its trademark.

Discussion

Refiners would be required to price the value of a trademark to a purchaser with specific products. Establishing such a value is impossible since a trademark has a different and constantly changing value. This value is based on many factors including geography, market penetration, product quality, competition, etc. This proposal would have far reaching implications for all marketing. Competition would certainly be lessened and many products could be reduced to a commodity.

Conclusion

This proposal would have far reaching and damaging implications for consumers, dealers, distributors and refiners. Like the rack pricing provision, this Section would lead to the gradual demise of branded gasoline marketing with all of the associated losses. The quality of products and services would decline as "commodities" were sold and the role of the independent dealer would, by and large, disappear.

Section 20 (d) (1)

- Prohibits any limitation on a dealer from purchasing, selling or storing motor fuel, which is obtained from another supplier.

Discussion

This provision would seriously jeopardize the quality control protection of motor fuels now provided to consumers and create chaos in resolving consumer product quality liability suits.

Motor fuels have as many different quality characteristics as the vehicles they fuel. Today, more than ever, with the price of gasoline increasing, unscrupulous operators are motivated to "water down" motor fuels. This provision would open the door to such activities with little control possible. Legitimate dealers as well as consumers would be victimized.

Further, refiners would no longer be able to plan and coordinate manufacturing, distribution and marketing activities. Downstream investment risks would rise beyond the point of economic return causing a deterioration in distribution and marketing systems and an attendant increase in consumer costs.

## Conclusion

This proposal would cause a total restructuring of petroleum distribution and marketing. Consumers would be the losers as product quality controls were lost and restitution for product quality liability became a matter for courts to resolve on a regular basis.

## Section 2 (d) (2)

- Requires service station dealers to provide reasonable notice to the public if the motor fuel being offered for sale is not that of the refiner whose brand is being displayed at the station.

## Discussion

If Section 20(d)(1) is passed, this control provision would be ineffective in protecting the consumer.

## Conclusion

This section is token recognition of the insurmountable problems that would arise from the passage of Section 20(d)(1).

In conclusion, we are totally opposed to H.R. 6722. The bill is unwarranted, anti-competitive and anti-consumer. It violates the spirit of a free enterprise system and although purported to protect the independent dealer, it would pave the way for his demise.

EXHIBIT "A"

## GASOLINE AUTOMOTIVE VOLUMES BY CLASS OF TRADE
## 1972 THROUGH 1979
## TOTAL US MOBIL SALES

Millions of Gallons

| | 1972 | 1973 | 1974 | 1975 | 1976 | 1977 | 1978 | 1979 |
|---|---|---|---|---|---|---|---|---|
| Owned/leased | 3289.2 | 3422.0 | 3369.6 | 2988.8 | 3072.1 | 3059.5 | 3236.8 | 3184.1 |
| % of Total | 50.8 | 49.6 | 50.1 | 47.8 | 47.1 | 47.8 | 48.5 | 46.7 |
| Open Dealers | 1263.9 | 1366.5 | 1315.2 | 1223.5 | 1228.3 | 1238.5 | 1252.7 | 1299.8 |
| % of Total | 19.5 | 19.8 | 19.5 | 19.5 | 18.8 | 19.3 | 18.8 | 19.1 |
| Wholesalers | 1206.0 | 1333.1 | 1366.1 | 1448.4 | 1680.3 | 1618.6 | 1760.9 | 1912.8 |
| % of Total | 18.6 | 19.3 | 20.3 | 23.2 | 25.8 | 25.3 | 26.4 | 28.1 |
| Sub-Total | 5759.1 | 6121.6 | 6050.9 | 5660.7 | 5980.7 | 5916.6 | 6250.4 | 6396.7 |
| % of Total | 88.9 | 88.7 | 89.9 | 90.5 | 91.7 | 92.4 | 93.7 | 93.9 |
| All Other | 713.1 | 779.9 | 679.9 | 597.7 | 543.2 | 484.2 | 424.3 | 418.2 |
| % of Total | 11.1 | 11.3 | 10.1 | 9.5 | 8.3 | 7.6 | 6.3 | 6.1 |
| Grand Total | 6472.2 | 6901.5 | 6730.8 | 6258.4 | 6523.9 | 6400.8 | 6674.7 | 6814.9 |
| % | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |

EXHIBIT "B"

## MOBIL OWNED OR LEASED RETAIL OUTLETS
## 1972-1979

M = Thousand gallons

| | 1972 | 1973 | 1974 | 1975 | 1976 | 1977 | 1978 | 1979 |
|---|---|---|---|---|---|---|---|---|
| Total Owned/Leased Outlets(1) | | | | | | | | |
| Year End Unit Count | 8640 | 8077 | 7713 | 7465 | 6885 | 6338 | 5990 | 5586 |
| Volume (M Gal) | 3,289,200 | 3,422,000 | 3,369,600 | 2,988,800 | 3,072,100 | 3,059,590 | 3,236,800 | 3,184,100 |
| Average Annual Volume (Excludes locations leased to Distributors) | 400 | 438 | 452 | 411 | 456 | 490 | 548 | 575 |
| Dealer Operations | | | | | | | | |
| Year End Unit Count | 8276 | 7665 | 7320 | 7062 | 6281 | 5674 | 5434 | 5186 |
| Volume (M Gal) | 3,089,700 | 3,147,800 | 3,058,400 | 2,723,100 | 2,701,000 | 2,557,990 | 2,659,400 | 2,742,300 |
| Average Annual Volume (M Gal) (Excludes locations leased to Distributors) | 393 | 428 | 433 | 397 | 440 | 459 | 496 | 534 |
| Locations leased to Distributors | 421 | 311 | 264 | 199 | 143 | 103 | 78 | 56 |
| Salary Operations | | | | | | | | |
| Year End Unit Count | 364 | 412 | 393 | 403 | 604 | 664 | 556 | 400 |
| Volume (M Gal) | 199,500 | 274,200 | 311,200 | 265,700 | 371,100 | 501,600 | 577,400 | 441,800 |
| Average Annual Volume (M Gal) | 548 | 666 | 792 | 659 | 614 | 755 | 1038 | 1104 |
| Mobil Termination | N/A | N/A | 41 | 62 | 78 | 56 | 47 | 22 |

N/A - Not available

Note:

1. This report includes only retail outlets owned or leased by Mobil. Non-lessee (open dealers) and distributor retail outlets are not included.

## EXHIBIT 10: SOHIO

SOHIO THE STANDARD OIL COMPANY
1000 SEVENTEENTH STREET N.W., SUITE 650, WASHINGTON, D.C. 20006

WILLIAM C. ROUNTREE
DIRECTOR
FEDERAL GOVERNMENT AFFAIRS

June 10, 1980

The Honorable Berkley Bedell
Chairman, House Small Business
Subcommittee on Antitrust and
Restraint of Trade Activities
Affecting Small Business
B-363 Rayburn House Office Building
Washington, D.C. 20515

The Honorable James H. Scheuer
Chairman, House Interstate and
Foreign Commerce Subcommittee
on Consumer Protection and Finance
3275 House Office Building Annex II
Washington, D.C. 20515

Dear Mr. Chairmen:

Attached is a statement of The Standard Oil Co. (Ohio) submitted by Robert G. Griffin, vice president of marketing, that we respectfully request be entered into the subcommittees' hearing records for May 20 and 21, and June 4 and 5, 1980, held on H.R. 6722, the "Small Business Motor Fuel Marketer Preservation Act of 1980."

Thank you for your assistance.

Sincerely,

William C. Rountree

WCR:ls
Attachment

cc: The Honorable Dan Quayle, Ranking Minority
Member, Subcommittee on Antitrust and
Restraint of Trade Activities Affecting
Small Business

The Honorable Matthew J. Rinaldo, Ranking Minority
Member, Subcommittee on Consumer Protection
and Finance

# STATEMENT OF
# THE STANDARD OIL COMPANY (OHIO)

TO THE

SUBCOMMITTEE ON ANTITRUST AND
RESTRAINT OF TRADE ACTIVITIES AFFECTING SMALL BUSINESS
OF THE
COMMITTEE ON SMALL BUSINESS

AND THE

SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCE
OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

REGARDING H.R. 6722

BY

ROBERT G. GRIFFIN
VICE PRESIDENT, MARKETING
THE STANDARD OIL COMPANY (OHIO)

JUNE 5, 1980

## STATEMENT OF
## THE STANDARD OIL COMPANY (OHIO)
## REGARDING H.R. 6722
## JUNE 5, 1980

This is a statement of The Standard Oil Company (Ohio) submitted by Robert G. Griffin, Vice President, Marketing, for the record in opposition to H.R. 6722 - Small Business Motor Fuel Marketer Preservation Act of 1980.

Basically, as drafted, H.R. 6722 would prohibit all major refiners from operating retail gasoline outlets with company personnel. It would further restrict refiners who are not integrated major oil companies to a "refiner sales ratio", which would in essence hold the proportion of their sales through company-operated stations to the 1978 level. A service station dealer leasing a station from an oil company would have a "right of first refusal" to purchase the station if it is offered for sale, and he would have the benefit of Small Business Administration loan guarantees to assist him. Multiple branding at service stations would be permitted under the bill. Refiners, producers and distributors would not be allowed to charge different prices to different classes of trade at points of transfer if similar quantities of fuel are purchased.

The bill has been introduced in response to the significant decline in the number of retail service stations in the period since 1972. Accompanying this decline has been a reduction in the proportion of gasoline volume which has moved through refiner directly-supplied dealer outlets. Dealer organizations claim that these events are the results of a concerted effort by major oil companies to eliminate dealers. They further charge that major oil companies are using predatory pricing practices at company-operated stations in competition with dealer locations and are subsidizing these stations with profits from other operations. Thus, along with other provisions, the bill seeks to eliminate refiner-operated stations as competitors with retail service station dealers.

It is our contention that the dealers' allegations do not stand up to the facts of the marketplace. Petroleum marketing is undergoing a metamorphosis of facilities. It is this same type of restructuring that took place 50 years ago in food distribution with the introduction of the supermarket, and will probably take place in the years ahead in "fast food" merchandising. As in the case of food distribution in the 1930's, in a free market, legislative action can only temporarily thwart consumer preference for marketing changes; it cannot stop or reverse the movement.

The significant decline in the number of service stations during the 1970's was caused by the rapidly changing buying patterns as well as basic service station economics. Following World War II, the service station population increased markedly as the automobile population and gasoline sales expanded. With real income growing and low cost gasoline available, Americans could afford to move away from the center cities of major metropolitan areas into suburban communities. Further, they could engage in extensive long distance travel via the newly-constructed interstate highway system. New service station construction followed the consumer and commercial migration and took the form of conventional two and three-bay facilities which could provide gasoline and minor automobile maintenance work at the same location.

By the mid-1970's the rapid growth in the service station population of the '50's and '60's was looked back upon as "overbuilding". Consumer buying patterns for gasoline and automotive products were changing rapidly and gasoline prices had jumped precipitously following the Arab oil embargo, stopping or slowing the growth in demand. In fact, this was the beginning of a change in American life style that included the shift from large, high consumption automobiles to more modest, fuel efficient vehicles.

While there had been great similarities in competitive marketing strategies up to the late 1960's, the introduction of gasoline-only facilities by efficient, low priced private brand marketers marked the beginning of the market segmentation. This was followed by the sale of gasoline at car washes and convenience food stores and the introduction of self-serve gasoline facilities. A growing number of customers responded to the price appeal of these marketing innovations. This was reinforced by the growing trend to do-it-yourself auto maintenance. Young motorists who had already been changing their own motor oil, tuning the engines of their cars, and making other automotive repairs, no longer felt willing to pay the higher gasoline prices associated with full-facility outlets. Technological changes were also taking place in automobiles, requiring less lubrication and fewer oil changes and tune-ups; meanwhile tires and batteries were lasting longer. Thus, consumers in increasing numbers deserted the conventional type station and moved some of the gasoline purchasing to price-oriented, gasoline-only outlets, convenient stores, car washes, and mass merchandisers. Conventional facilities declined in numbers and in overall marketing strength, regardless of how they were operated, by dealers or employees of major oil companies.

At the same time, basic service station economics were impacting on the conventional type outlet. The cost of running a conventional station increased substantially. Payroll, equipment, utilities, taxes, and service expenses soared. For example, the minimum wage increased by over 40% from 1966 to

1974 and was more than double by 1979. Low volume outlets could not cover costs. Further, the profits on gasoline were held down by the more efficient competitors who were responding to price-conscious customers through low cost marketing methods. Direct expenses of 2¢-4¢/gallon were common for efficient gasoline-only stations while full facility outlets were frequently running two to four times the cost per gallon to operate. The combination of market segmentation and basic economics impacted on the population of conventional type stations, resulting in a large number of station closings.

The national trends in petroleum marketing impacted with equal force on Sohio and the markets in which it operates. These trends, plus the unique divestiture requirements associated with the Sohio/BP merger described later, explain Sohio's overall decline in number of stations.

The country-wide decline in the proportion of sales through dealer outlets is the result of the changes in consumer preference, not predatory pricing at or subsidization of company-operated stations. This conclusion is being documented by the ongoing study of the Office of Competition of the Department of Energy. When the Petroleum Marketing Practices Act was passed by Congress in 1978, Title III called for a study by the Department of Energy to determine if major oil companies were subsidizing marketing operations with profits from other phases of the business to the detriment of their branded dealers. Part I of the study has now been released.[1]

The study shows that, in fact, dealers supplied directly by refiners dropped in share of volume from 51% in 1972 to 37% in 1979. It is pointed out that this was caused, in large part, by the nature of government pricing and allocation regulations. The classes of trade that gained at the expense of the dealers were the branded jobbers and unbranded independents who together increased share by 13 percentage points, from 33% to 46%. In contrast, company-operated retail outlets showed an increase of only 4 percentage points in the seven-year period. Further, the report indicated that company-operated stations in the first test area were not engaged in predatory pricing based on subsidization, but rather were operating profitably.

Sohio's operations, both in Ohio and on the East Coast, are consistent with these findings. The company is not engaged in predatory pricing or subsidization in its company-operated network. Sohio's pricing philosophy concerning predatory pricing was expressed very clearly in 1947 by a company executive who had participated in pricing decisions since the 1920's. This philosophy was quoted by Dr. Edmund P. Learned of Harvard University in his book Gasoline Pricing in Ohio:

> One of the fallacies often advanced is that so-called leading marketers reduce prices to drive out competition so that they may later enjoy a monopoly. That is like trying to sweep back the ocean to get a dry place to sit down. Competition is impelled by impersonal forces that never scare and never hesitate for a long time, and would move in immediately when prices were restored, offering little opportunity to a single marketer to recoup his losses. As a practical matter, selling below cost to drive out a competitor is a sure road to bankruptcy.[2]
>
> ... The marketplace in a competitive economy provides a continuous customer plebiscite in which success depends entirely upon the ability of the marketer to please a customer at a profit.[3]

In response to a recent inquiry by Senator Howard Metzenbaum of Ohio concerning predatory prices, the Justice Department confirmed that Sohio was not engaged in predatory pricing. In his letter of December 6, 1979, Donald L. Flexner, Deputy Assistant Attorney General, Anti-Trust Division, U. S. Department of Justice, reported as follows:

> We carefully examined the allegations in light of our understanding of the retail gasoline market in Ohio and concluded that they were not sufficient to warrant further inquiry for two reasons. First, Sohio's pricing pattern at both the retail

> level through company-operated outlets and at the DTW level did not appear to differ in any material respect from those of other refiner/marketers, regardless of their size. Consequently, we saw no reason to believe that Sohio was engaged in predatory pricing aimed at monopolizing the retail gasoline market.
>
> ... Second, we reviewed the effects of mandatory pricing and allocation controls administered by the Department of Energy ("DOE") on Sohio's marketing decisions. This review indicated that those controls severely limited the pricing discretion of dual distribution refiner/marketers such as Sohio.
>
> ... They left Sohio little, if any, ability to change the price differential between different classes of purchasers.
>
> ... Thus, Sohio's pricing patterns were most likely attributable to those controls rather than to any conscious decision by Sohio.
>
> Given the fact that Sohio's pricing patterns were not shown to have been predatory in nature and, in fact, appeared to have been dictated by DOE pricing controls, we concluded that further anti-trust investigation into this matter was not appropriate.[4]

It is, of course, appropriate to note that until the North Slope Alaskan crude oil, in which Sohio has a significant interest, began to flow in 1977, Sohio was essentially a refiner/marketer. At its previous peak of self-sufficiency in 1960, Sohio's own crude oil provided only 28.7% of crude oil processed at its refineries. Self-sufficiency in crude oil ranged between only 10 and 16% during the 1969-1976 period.[5] Over a long history of 65 years, Sohio had become a highly efficient refiner/marketer. With this philosophy and expertise well developed, there was certainly no need to begin to engage in predatory pricing practices once the company became fully self-sufficient in crude oil supplies in 1977-78 period.

The drop in the number of dealer stations as a proportion of Sohio's total owned outlets relates not to cancelling dealers in an "arbitrary and capricious" manner, but rather to the special circumstances of a Consent Decree Sohio was required by the Justice Department to sign in 1969 in order to gain approval for the Sohio/BP merger.

The Consent Decree required Sohio to divest itself of 400 million annual gallons of taxable motor fuel. This was the equivalent of several hundred stations. As a result of a difficult marketing environment for conventional stations, Sohio was unable to quickly find buyers to enable it to comply with the Consent Decree. The Federal judge who was appointed to oversee compliance with the Consent Decree, ultimately appointed a "Special Master" who, in turn, developed lists of Sohio's service stations geographically spread throughout the state of Ohio and representing all volume classes. As attempts to sell the stations dragged on, it became clear that potential buyers insisted on two circumstances before they would consider purchasing a station: (1) that they be open and operating, and (2) that they be unencumbered by leases.

Therefore, Sohio dealer leases were allowed to evolve to only 30-day leases rather than being full year leases they had been previously. Normal dealer attrition took place during this period as factors such as death, retirement, greater security offered by competitors and uneconomic station closings all took their toll. Sohio could not attract other dealers into these stations, given the 30-day lease constraint, but was obligated to keep stations open in order to have a chance to sell them. The only alternative Sohio had was to operate these former dealer stations on a company-operated basis. These are the circumstances which prevailed as the required divestment was completed after eight years in 1978.

After having completed the divestment requirements in 1978, Sohio extended long term leases to its remaining dealers. About 95% of Sohio's current dealer population now has five-year leases.

Some background on the development of Sohio's marketing organization will give perspective to the current operation.

> Sohio's gasoline marketing business is split into two distinct territories — Sohio branded territory which consists of Ohio and the four contiguous states, and the BP branded territory which generally comprises the Mid-Atlantic states. Sohio has marketed in the Ohio territory since 1912 and is currently the largest gasoline retailer in Ohio. In contrast, Sohio has been doing business in the BP territory only since 1970 and has a relatively small percentage of the gasoline market in that area.
>
> ... The retail marketing facilities in BP branded territory were acquired by Sohio in its 1970 merger with the British Petroleum Company. British Petroleum had .... acquired the facilities of the Sinclair Oil Corp. when sale of those properties was required by the Justice Department as a condition for approval of the merger between Sinclair and Atlantic Richfield. Many of these old Sinclair properties were run down and outmoded and the stations as a group could not be operated profitably.
>
> Beginning in 1970, when it acquired the properties, Sohio made large investments in upgrading old stations and constructing new ones in an attempt to put BP branded marketing on a profitable basis. Unfortunately, these efforts with all dealer-operation were unsuccessful and in the first three years of conventional operation, Sohio's losses approximated $150 million. Faced with the prospect of continuing losses of the same magnitude, Sohio had to decide whether it would sell off properties and withdraw from the BP branded territory, or whether it should try a different marketing format in this territory.[6].

Sohio determined that it would sell its marketing operation in the southeastern portion of the United States and withdraw from the market. This was achieved in 1973 with the sale of marketing properties and the Port Arthur, Texas refinery to American Petrofina, Inc. This operation continues today as a jobber-supplied marketing network under the Fina brand.

In contrast, Sohio decided to continue operations in the northeastern section of the country, but under a new, and hopefully profitable, structure. Some 450 lessee-dealer and jobber-operated BP stations were rebranded to the "Wm. Penn" trademark. Gasoline-only outlets were introduced in several major metropolitan areas under the "BP" brand. Some were converted from dealer operation. The dealers were offered the choice of managing the converted stations as BP employees, moving to Wm. Penn stations as dealers, or purchasing the stations which BP had decided to sell as part of its restructuring program. The balance of the jobber operations outside the specific metropolitan areas retained the BP brand. Through these steps the losses were eliminated and the operation continues under this structure today.

Historically, in Sohio's Ohio territory, company-operated stations have played a significant role in Sohio's marketing structure. This has been contrary to the practices of most other refiners, but consistent with freedom of choice for the motorists. Ohio motorists have been pleased to be able to choose from alternate methods of operations available in the marketplace. During the long history of over half a century, the Sohio brand has retained leadership in the market responding to the buying preferences of the motorists with both dealer and company-operated outlets.

H.R. 6722 would create unnecessary dealer protection; and, as a consequence, increase the cost of gasoline to motorists, cut availability during evening and weekend hours in times of tight supply, eliminate the consumer's freedom of choice, and disrupt employment of company station personnel.

Dealers are already protected against arbitrary termination or non-renewal of leases under Title I of the Federal Petroleum Marketing Practices Act. This is commonly known as the "Dealer Day in Court" bill which became law in 1978. Very specifically, the Act prohibits non-renewal of a franchise relationship if determination to close a station is:

> ... made for the purpose of converting the leased marketing premises to operation by employees or agents of the franchisor for such franchisor's own account.[7]

This is long-term legislation and should be given an opportunity to work before additional restrictions are considered.

As noted previously, Part I of the DOE study under Title III of the Petroleum Marketing Practices Act did not find evidence of predatory pricing or subsidization of refiner-related retail outlets. Part II of the study is scheduled for completion during the fall of 1980. It will provide the netback results from four other test areas and examine functional profitability and marketing strategies of subpoenaed companies. With this work underway, it is premature to consider any legislation before the final results of the study can be reviewed.

If enacted, Retail Divorcement would be costly to American motorists. Elimination of company-operated stations would immediately raise gasoline prices to those motorists purchasing from these stations. One study completed in several eastern markets during December, 1978, before the Iranian cut-off of crude oil, showed company-operated stations selling between 1.4¢/gallon and 4.9¢/gallon below lease dealer outlets.[8.] As submitted in prior testimony, the average gasoline price of Sohio dealers in Ohio during 1978 was 2.8¢/gallon above the company station price.[9.] Taking an average differential of 3¢/gallon and using company-operated volume in the U.S., as derived from the Office of Competition - Title III Study, customers now buying at these outlets would have to pay $400 million more per year under dealer operation. This estimate may be conservative, since dealers who support this legislation have recently been charging anywhere from 6¢ to as much as 8¢/gallon more than company-operated stations.[10.]

It is not speculation that motorists will pay more if this legislation is enacted. The fact is that it has already occurred in Maryland where Retail

Divorcement became effective July 1, 1979. For example, prior to that date, our BP company station prices in Maryland were the same as those in nearby Philadelphia, Pennsylvania. As of May, 1980, under dealer operation, these Maryland BP dealer stations are pricing about 9¢ higher than our Philadelphia stations.[11] This is after adjustment for differences in taxes.

As was pointed out in prior testimony, when company-operated stations were eliminated in Maryland, there was an immediate push by the Dealer Association for dealers to raise prices. This prompted the Chief of the Anti-Trust Division of the Maryland Attorney General's Office to write the Association, warning them of possible antitrust liability. The references concerning this incident are attached to this testimony.[12]

Further, in Maryland, we have recently seen that the Department of Energy has ordered 160 service station operators to reduce their prices and pay fines for overcharging their customers for gasoline.[13] Two-hundred additional stations were issued warnings for overpricing, but to a lesser extent. This action by the DOE followed a near 100% census conducted by the comptroller's office in Maryland which showed that one out of every five stations in the state were overcharging. While these citations may reflect closer scrutiny of prices in Maryland than in other states, they may also show the environment which develops when competition is lessened by the removal of one class of competitor (refiner-operated stations).

You may also be interested in the income of dealers in Maryland who took over the stations after we were required by law to convert from company-operation to dealers. Based on average operating economics, 85% of our BP dealers are now receiving net incomes in excess of $80,000/year. It is only natural that income potential of this magnitude is a strong motivator for requesting special interest legislation to insulate their earnings.

This proposed legislation would also reduce the availability of gasoline to motorists during evening and weekend hours in times of gasoline shortage. For example, during the tight supply situation of 1979, Sohio staggered the hours and days of operation at company stations so that many were open on weekends and in the evenings when motorists needed gasoline, but when most dealers of all brands were closed. Further, extraordinary steps were taken to ensure that stations were open along Ohio interstate highways on summer weekends and during holiday periods, again when many dealer stations were closed. This accommodation would not be possible again if company-operated stations are prohibited. Historically, company-operated stations have been open longer hours to serve the public than dealer-operated stations. We have attached data on hours of operation to illustrate this point.[14].

The customer who has chosen to buy at a company-operated service station would be denied this freedom of choice by this proposed legislation. The conventional service station dealer has historically provided a mix of products and services that have had appeal, including neighborhood convenience and personal relationship with the customer. Many customers, exercising freedom of choice, have been willing to pay a few cents more for that package of services. By the same token, other motorists, or the same motorists at other times, have been able to exercise freedom of choice to patronize outlets which charge a few cents less, and which provide a similar or different mix of services which those customers found satisfactory at the prices asked.

Not only will Retail Divorcement cost the consumer money, freedom of choice, and convenience, it will jeopardize the livelihood and cause serious job dislocation for tens of thousands of company station employees throughout the U.S. All company station employees - managers, assistant managers, mechanics, bookkeepers, cashiers, island salespersons - will have to find new employers, needlessly disrupting income continuity and benefits that come with being associated with a substantial company. While many of the positions would still be in existence if stations converted to dealer operation, it is highly probable that the new dealer would select employees other than those presently at the station. And, of course, present managers who do not have the financial resources or desire to become a dealer would be out of a job.

Sohio/BP alone has approximately 13,000 full and part-time company station employees whose livelihood would be impacted by this legislation. Since Sohio has operated company stations for half a century, many of these employees who would lose their jobs, managers and others, have been with Sohio/BP for over twenty-five years. As a matter of fact, approximately 2400 are over 40 years of age, a time in life when it is hard to make a job change. In addition, hundreds of other accounting and clerical employees associated with the administration of company-operated stations would be adversely affected. This would be a stressful experience and would be taking place at a time when unemployment is rising and jobs are difficult to obtain.

In addition to the damage to competition which would be caused by the main thrust of H.R. 6722 to prohibit refiner-operated stations, other provisions of the bill would hurt specific segments of the industry, especially the lessee dealers whom the bill is seeking to protect.

Specifically, rack pricing required under H.R. 6722, even with allowances for delivery costs and surcharges associated with use of the company trademark, will cause hardships to refiners, jobbers, dealers and motorists. Rack pricing will eliminate Robinson-Patman "good faith" meeting of price competition. This approach ignores the marketplace and the fact that all refiners do not have the same costs of crude oil, refining or distribution. Essentially, a supplier will be unable to meet competition in a local market and make lower price offerings to individual customers or classes of trade, without bringing down prices to all customers from a given broad distribution point. This could be highly uneconomical for a supplier. Without help, dealers of a specific brand, therefore, could become non-competitive in many markets and be unable to survive. This could destroy the major brand dealers that the bill proports to assist.

In addition, the jobber channel of trade would be seriously hurt as any dealer large enough to purchase in transport quantities would bypass the jobber and purchase directly from the refiner. Jobbers carry out the functions of storage, delivery, credit and invoicing. Under this provision there would no longer be a margin allowed in the marketplace to compensate jobbers for their services.

Multiple branding at service stations would cause severe consumer confusion and unfair competition. Multiple suppliers for a station as proposed under H.R. 6722 would lead to consumer confusion as to the brand and quality of products being sold at a station under a given trademark. Although dispensers could be appropriately marked, motorists would be attracted to the station by the brand identification on the station building and on the I.D. signs. Having been drawn into the station the customer would feel deceived by the offering of a product of another brand or no brand at all. Further, this provision would allow a competitor to take unfair advantage of an established company's trademark/brand loyalty. The new market entrant could dump product into a station, making no capital investment in the market, but drawing on the goodwill of the original brand. In total, this provision could reduce the value of a major brand franchise and lead to a reduction of investment by major oil companies in lessee dealer type facility.

The "right of first refusal" given dealers under H.R. 6722 to purchase a station if a refiner desires to sell goes beyond the bounds of a typical "right of first refusal". The "purchase right" granted exceeds the meeting of a bona fide offer and establishes an unspecified system of independent appraisal. As a result, refiners may be deprived of property without due process or just compensation. This "right" limits severely the marketability of the real estate.

Further, dealers already have a "right of first refusal" to purchase their stations under the Petroleum Marketing Practices Act. If non-renewal of a franchise is based on the franchisor's determination to convert the facility to a use other than the sale of motor fuel, materially alter the premises, sell the premises, or close the station as being uneconomical, the franchisor must either grant the dealer a right of first refusal or offer to sell the station to him.[15].

The proposed legislation is bad precedent. Many other major categories of goods and services are available to the consumer through dual distribution marketing programs involving company-operated and franchise-operated (dealer) retail outlets. These include convenience food stores, tire stores, motels, automotive and truck dealers, fast food restaurants and automotive rental services. All of these industries have grown and thrived under a system of dual distribution.

In the introduction to the joint hearings on H.R. 6722 the Chairman of the Small Business Subcommittee expressed amazement at dual distribution in the petroleum industry in the following words:

> ... Many of us on the Subcommittee were dumbfounded by the notion of a major refiner "competing" with dealers whose rent they controlled, whose product supply and price they controlled, whose credit terms and advertising they controlled, and so forth. This did not conform with our notion on fair competition....16.

The dual distribution system of marketing is commonplace in American commerce. It has enabled hundreds of thousands of small business people to successfully establish their own firms by capitalizing on the names and images of their suppliers.

Good examples of the degree to which firms in product/service areas other than petroleum market through both franchisee and company-operated stores can be found in the lodging, fast food, convenience store and electronics industries.

> In lodging, the industry leader had some fourteen percent of its inns, including nineteen percent of its rooms, under a company-operated mode during 1979.
>
> During the past year, the top fast food chain had twenty-seven percent of its units being operated by company personnel. Further some fifty-five percent of its outlets were owned by the firm.
>
> In the convenience food store industry, the largest firm had over sixty percent of its units company-operated in 1979.
>
> And in the electronics field, the top firm also had over sixty percent of its retail stores operated by company personnel.

In each instance, the proportion of company-operated retail outlets of these firms far exceeds that in the oil industry.

A large number of states have rejected retail divorcement, either through inaction or by legislative vote. Since the enactment of the Maryland statute, similar legislation has been introduced in 39 states and the District of Columbia under pressure from dealer organizations. To date, only four other states and D.C. have passed bills. The states, much closer to the day-to-day workings of the marketplace than Congress, have seen such legislation for what it is: special interest legislation to protect one group of competitors from another, to the detriment of the consumer.

In his prepared statement of June 5, 1980, Milton D. Stewart, Chief Counsel for Advocacy, U. S. Small Business Administration refers to the "BP-Northeast Project Plan." Mr. R. G. Griffin's letter of October 29, 1979 to Chairman Berkley Bedell shows clearly that the BP Northwest Report has never represented the policy of the Company. A copy of that letter is attached as Exhibit 10.*

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*Committee note: Chairman Bedell's letter of October 17, 1979, to Mr. Griffin follows Exhibit 10, along with relevant portions of the internal SOHIO document, The BP Northesast Project, Report and Recommendations.

## FOOTNOTES

Page 4
1. The State of Competition in Gasoline Marketing, DOE office of Competition, James B. Delaney and Robert N. Fenili (May 1980).

Page 5
2. Edmund P. Learned, Gasoline Pricing in Ohio (Boston, Graduate School of Business Administration, Harvard University, 1959), p. 25.

3. Ibid., p. 26.

Page 6
4. EXHIBIT 1.

5. EXHIBIT 2.

Page 8
6. 96th Congress, 1st Session, House Subcommittee on Antitrust and Restraint of Trade Activities Affecting Small Business, Hearings on Gasoline Retail Marketing Practices, 1979, Part C, pp. 286-288.

Page 9
7. 15USC 2802 (b)(3)(D)(ii)

Page 10
8. EXHIBIT 3.

9. Hearings on Gasoline Retail Marketing Practices, Part B, p. 47.

10. EXHIBIT 4.

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11. EXHIBIT 5.

12. EXHIBITS 6 and 7.

13. EXHIBIT 8.

Page 12
14. EXHIBIT 9.

Page 15
15. 18USC 2802 (b)(3)(D)(iii)

Page 16
16. Hearings on Gasoline Retail Marketing Practices, Statement of Hon. Berkley Bedell, May 20, 1980.

Page 17
17. EXHIBIT 10.

EXHIBIT 1

United States Department of Justice
WASHINGTON, D.C. 20530

December 6, 1979

ANTITRUST SUBCOMMITTEE
RECEIVED
DEC 7 1979
WASHINGTON, D. C. 20510

The Honorable Howard M. Metzenbaum
Chairman, Subcommittee on Antitrust,
  Monopoly & Business Rights
United States Senate
Washington, D.C. 20510

Dear Senator Metzenbaum:

Thank you for your letter of October 22, 1979, requesting that the Department of Justice investigate certain marketing activities of the Standard Oil Company of Ohio ("Sohio"). As the Department has recently completed a review and analysis of the matters raised in your letter, I can now report our findings.

Your letter indicates a concern that Sohio may have favored its company-operated retail stations over the branded independent dealers it supplies in two ways: (1) by supplying its own stations at lower "rack" prices rather than at the higher dealer tankwagon ("DTW") prices, and (2) by charging rent on service station property only to independent dealers. You also indicate that this behavior may be part of a larger effort by Sohio to convert all of its dealer-operated outlets to company-operated facilities, consistent with a Sohio memorandum entitled, "The BP Northeast Project: Report and Recommendation." That memorandum recommends that Sohio shift its BP branded marketing system in the Northeast from full-service branded independent dealers to a system of company-operated gas-and-go outlets. This change was to be achieved by a number of actions, including buying out BP dealers, providing such dealers with other employment opportunities within that company and, if necessary, coercing these dealers to leave their stations by raising their rent and product prices and by reducing the quantity and quality of service provided to these dealers. After careful consideration, the Department has concluded that these allegations do not raise concerns requiring further investigation under the antitrust laws at this time. 1/

The Sohio/BP memorandum, dated May 1973, first came to the attention of the Justice Department in 1975 in connection with the enforcement of our consent decree ending litigation arising out of the acquisition of Sohio by the British Petroleum Company ("BP"). 2/ That decree required that Sohio divest itself of a number of service stations in Ohio and Western Pennsylvania. In the course of that proceeding, the Department carefully analyzed the matters contained in that memorandum as they related to Sohio's compliance with that decree. In the course of that enforcement action, and prior to our receiving that memorandum, Department attorneys had taken depositions of several major marketing officials at Sohio and conducted interviews with independent jobbers and marketers in competition with Sohio. Those inquiries did not reveal a sufficient basis to conduct an independent investigation of Sohio's other marketing activities, including its treatment of its branded independent dealers. Nor was the Department aware of any other information sufficient to initiate such an investigation.

Several months ago, the Department undertook a further investigation of Sohio's compliance with the provisions of the consent decree. In the course of that investigation, the Department reexamined the Sohio memorandum. In addition, Department attorneys again interviewed Sohio officials and representatives of companies which acquired service stations from Sohio pursuant to the 1970 consent decree. That review disclosed no reason to alter our original conclusions in this regard.

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1/ Your letter also indicated that your staff was aware of some evidence indicating that Sohio may be providing its company-operated stations with higher gasoline allocations than it provides to independent Sohio dealers. This allegation may reveal a violation of the Department of Energy's mandatory petroleum price and allocation regulations. Accordingly, we have forwarded a copy of your letter to Mr. Paul Bloom, Special Counsel for Compliance in the Department of Energy's Economic Regulatory Administration.

2/ United States v. the Standard Oil Company, an Ohio Corporation, et al., Civil Action No. C69-954 (N.D. Ohio, Jan. 1, 1970).

The Department has recently reviewed a number of complaints that company-operated stations operated by Sohio and other integrated refiners were selling gasoline at very low prices, thereby placing considerable pressure on independent dealers. Such complaints were received from a number of sources, including participants in the study of alleged subsidization of retail gasoline marketing operations by integrated refiners mandated by the Petroleum Marketing Practices Act of 1978. 3/ Some of these complaints reflected your concern that low prices at company-operated stations were achieved by providing such stations with gasoline, facilities, and services at what were claimed to be unreasonably low prices.

We carefully examined these allegations in light of our understanding of the retail gasoline market in Ohio and concluded that they were not sufficient to warrant further inquiry for two reasons. First, Sohio's pricing patterns at both the retail level through company-operated outlets and at the DTW level did not appear to differ in any material respect from those of other refiner/marketers, regardless of their size. Consequently, we saw no reason to believe that Sohio was engaged in predatory pricing aimed at monopolizing the retail gasoline market. This conclusion was supported by a careful reading of the Sohio memorandum itself. The memorandum recommended that Sohio divest itself of its BP branded stations on the East Coast in rural areas and directly operate its BP stations in major metropolitan markets, where its market share was relatively low and where it faced vigorous competition from independents and other integrated refiners. Moreover, there was no indication that Sohio expected or intended to drive dealers supplied by independent refiners or by other integrated firms from the market. Finally, the memorandum contained a recommendation that Sohio continue to distribute significant quantities of gasoline through its BP affiliated jobbers and independent dealers. This suggested that Sohio's marketing strategy was not aimed at acquiring a monopoly at the retail level. Since the conclusion of that investigation, no new information has been brought to our attention that would contradict these conclusions.

Second, we reviewed the effect of the mandatory price and allocation controls administered by the Department of

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3/ Pub. L. No. 95-297, 92 Stat. 322.

Energy ("DOE") on Sohio's marketing decisions. This review indicated that those controls severely limited the pricing discretion of dual distribution refiner/marketers such as Sohio. 4/ Those regulations limited the maximum lawful price any refiner could charge to any class of purchasers to a level determined by the price it charged on May 15, 1973, to that same class of purchasers, plus 100 percent recoupment of increased product costs, and more limited recoupment of other costs.

Because these controls in essence specified the maximum price for each sale by narrowly restricting the allocation of costs to various products, they left Sohio little, if any, ability to change the price differential between different classes of purchasers. 5/ Nor could a refiner realign its classes of purchasers or change the type of service it offered without DOE's permission, since these controls froze refiners' customary price and service patterns to those prevailing in May 1973. Thus, Sohio's pricing patterns were most likely attributable to those controls rather than to any conscious decision by Sohio.

Given the fact that Sohio's pricing patterns were not shown to have been predatory in nature and, in fact, appeared to have been dictated by DOE price controls, we concluded that further antitrust investigation into this matter was not appropriate. Nonetheless, in light of your recent letter, we have again reviewed the pertinent DOE regulations. These regulations have remained substantially unchanged since our earlier investigation. Accordingly, we have no basis for altering our earlier conclusions in this regard.

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4/ Authority to regulate the price and allocation of refined products, including gasoline, is provided by the Emergency Petroleum Allocation Act of 1973, as amended, 15 U.S.C. § 751 et seq. The regulations implementing this authority are set out in 10 C.F.R. §§ 211 and 212.

5/ In response to recent claims by large numbers of branded independent dealers that those controls are forcing refiners to adopt pricing patterns that needlessly injure those dealers, DOE is considering amendments to its price and allocation controls that would provide refiners with the discretion to change their pricing patterns to eliminate this injury. See DOE, Equal Application Rule and Allocation of Increased Cost at Retail Level, 44 Fed. Reg. 54902 (Sept. 21, 1979).

The conclusions outlined above are, of course, based on our analysis of currently available information. As such, they are subject to revision on the basis of any new information which may become available to us.

I trust that this letter is responsive to your concerns. Thank you for your expression of interest in this important matter.

Sincerely yours,

Donald L. Flexner

Donald L. Flexner
Deputy Assistant Attorney General
Antitrust Division

EXHIBIT 2

## THE STANDARD OIL COMPANY (OHIO)

## SELF-SUFFICIENCY OF CRUDE OIL
## 1951 - 1976

|  | Thousands of Barrels/Day |  |  |
|---|---|---|---|
|  | Crude & NGL Produced | Crude Processed | Percent Self-Sufficiency |
| 1951 | 33.7 | 118.9 | 28.3% |
| 52 | 33.9 | 118.5 | 28.6 |
| 53 | 30.7 | 133.8 | 22.9 |
| 54 | 32.2 | 121.0 | 26.6 |
| 55 | 31.4 | 129.4 | 24.3 |
| 56 | 35.0 | 140.5 | 24.9 |
| 57 | 36.5 | 110.7* | 33.0 |
| 58 | 35.3 | 128.1 | 27.6 |
| 59 | 38.9 | 139.0 | 28.0 |
| 60 | 39.5 | 137.7 | 28.7 |
| 61 | 37.4 | 139.8 | 26.8 |
| 62 | 39.6 | 141.2 | 28.0 |
| 63 | 40.0 | 151.5 | 26.4 |
| 64 | 40.3 | 159.1 | 25.3 |
| 65 | 44.9 | 163.0 | 27.5 |
| 66 | 45.8 | 168.1 | 27.2 |
| 67 | 46.7 | 167.0 | 28.0 |
| 68 | 47.8 | 174.4 | 27.4 |
| 69 | 51.0 | 350.6 | 13.5 |
| 70 | 51.1 | 376.9 | 13.6 |
| 71 | 53.0 | 382.1 | 13.9 |
| 72 | 50.1 | 399.6 | 12.5 |
| 73 | 51.1 | 381.7 | 13.4 |
| 74 | 51.6 | 323.3 | 16.0 |
| 75 | 49.6 | 364.4 | 13.6 |
| 76 | 41.9 | 405.2 | 10.3 |

*Strike

## EXHIBIT 3

## ATTENDED REGULAR GRADE PRICE COMPARISONS

| | State of Maryland | Metro Baltimore, Maryland | Metro Detroit, Michigan | State of New Jersey | Metro Philadelphia, Pennsylvania |
|---|---|---|---|---|---|
| Refiner/Producer, Company-Operated | 63.0¢ | 61.7¢ | 65.1¢ | 61.7¢ | 61.7¢ |
| Refiner/Producer, Lease Dealers | 67.8 | 66.3 | 67.7 | 63.1 | 65.2 |
| Refiner/Producer, Open Dealers | 66.7 | 66.9 | 67.2 | 63.7 | 63.6 |
| Jobber, Company-Operated | 63.9¢ | 60.9¢ | -¢ | 61.4¢ | 60.5¢ |
| Jobber, Lease Dealers | 66.8 | - | 65.1 | 62.4 | 63.2 |
| Jobber, Open Dealers | 66.4 | 62.9 | 64.8 | 63.3 | 61.8 |
| Non-Branded, Company-Operated | 61.2¢ | 62.7¢ | 61.9¢ | 59.3¢ | 60.4¢ |
| Non-Branded, Lease Dealers | 61.7 | - | - | 60.5 | 59.2 |
| Non-Branded, Open Dealers | 62.7 | 59.9 | 62.9 | 61.1 | 59.5 |
| Refiner/Producer, Company-Operated Versus... | | | | | |
| Refiner/Producer Lease Dealers | -4.8¢ | -4.6¢ | -2.6¢ | -1.4¢ | -3.5¢ |
| All Outlets Ex. R/P, Company-Ops | -3.7¢ | -4.5¢ | -2.0¢ | -1.4¢ | -4.5¢ |

Source: Lundberg Surveys, Inc.

1/15/79 Update

EXHIBIT 4

## OHIO RETAIL GASOLINE PRICES

January, 1980

Cents Per Gallon

| | Full Service | | | Self Service | | |
|---|---|---|---|---|---|---|
| | Regular | Unleaded | Premium | Regular | Unleaded | Premium |
| Sohio Company | 108.0 | 112.0 | 115.0 | 106.0 | 110.0 | 113.0 |
| Sohio Dealers | 114.5 | 118.2 | 120.9 | 112.7 | 116.7 | 118.2 |
| Other Majors | 122.1 | 125.8 | 128.2 | 116.6 | 121.3 | 125.5 |
| Private Brands | 114.5 | 119.3 | 122.1 | 112.4 | 117.8 | 122.1 |

Differences

Other Channels vs. Sohio Company Stations

| | | | | | | |
|---|---|---|---|---|---|---|
| Sohio Dealers | + 6.5 | + 6.2 | + 5.9 | + 6.7 | + 6.7 | + 5.2 |
| Other Majors | +14.1 | +13.8 | +13.2 | +10.6 | +11.3 | +12.5 |
| Private Brands | + 6.5 | + 7.3 | + 7.1 | + 6.4 | + 7.8 | + 9.1 |

Based on May 14, 1980 Price Survey

## EXHIBIT 5

## BP PRICE SURVEY

Prices at BP Company stations in Eastern Pennsylvania and Maryland were comparable prior to implementation of Maryland divorcement legislation in July, 1979.

In less than a year of Dealer operation the Maryland stations have developed prices ranging from 8.4 to 9.0¢/gallon over the Pennsylvania stations which remain under Company operation. The table below results from a price survey of May 14, 1980.

| | FULL SERVE | | | SELF SERVE | | |
|---|---|---|---|---|---|---|
| | Maryland Dealer | Pennsylvania Company | Diff | Maryland Dealer | Pennsylvania Company | Diff |
| Regular | 103.0¢ | 94.0¢ | 9.0¢ | 102.5¢ | 94.1¢ | 8.4¢ |
| Unleaded | 107.0¢ | 98.0¢ | 9.0¢ | 106.5¢ | 98.1¢ | 8.4¢ |

All prices exclude taxes

Based on 76 Maryland stations and 89 in Eastern Pennsylvania.

Greater
Washington/Maryland Service Station Association
MEMBER NATIONAL CONGRESS OF PETROLEUM RETAILERS

GREENBELT, MARYLAND 20770
AREA CODE (301) 441-1600

WOODY COLE
President

VICTOR RASHEED
Executive Director

Exhibit 6

BULLETIN #3
February 6, 1979

## WARNING TO DEALERS... DON'T BE CAUGHT

The new standby, emergency gasoline pricing controls and allocation regulations just released by the Department of Energy, give it the authority to freeze gasoline prices at the price posted anytime in the 60-day period, immediately prior to the regs being implemented.

THERE IS A STRONG PROBABILITY THE EMERGENCY REGS WILL BE IMPLEMENTED IN EARLY APRIL...SO LOOK OUT!!!!

In the event of an extended supply shortage as now appears to be inevitable dealers caught with unrealistic prices in a period of shortages-could be quickly forced out of business.

This is no longer a competitive situation. This has become a matter of survival. Dealers will need every cent of allowable profit to offset the anticipated supply shortage if they are to survive.

Our information is that with several majors, (Shell, Texaco & Arco), already granted permission to use the larger of either 1972 or 1977 volumes as a base period for future allocations, another five or six including Exxon, Amoco, Gulf & Mobil are down at D.O.E. for the same thing.

The new regs also give D.O.E. the right to maintain a retail price differential between regular and unleaded gasoline. Unleaded wholesale prices will also be allowed to increase.

Shell has increased four cents in recent weeks, because it has had to purchase gasoline on the spot market. This is rapidly drying up and the price is going out of sight.

Jobbers and independents are being forced to raise prices because their costs are much higher in many cases than dealer's tank wagon. This means that dealers are now in the driver's seat. The majors are more concerned with protecting their dealers than independents and jobbers. They want you to survive. If you are hurt by your allocation, don't be afraid to ask your district manager for a rent adjustment.

## WASTE OIL DONATIONS FALTER

Since the association switched its waste oil program to Baumgardner's Waste Oil Service, the old pickup contracts are not being used.

Dealers and drivers have been confused as to the amount being donated to the association. As a result we are enclosing a coupon with a return envelope for you to specify the amount you wish to donate to the association. This will be made up into a new master list so that drivers will automatically issue you a check for the dealer's share and a duplicated credit slip for the amount donated to the association. Donations will be acknowledged by us each month. This money has been a great help to G.W.M.S.S.A..

The going rate is 10 cents per gallon and all Waste Oil Service drivers have identity cards signed by Vic Rasheed. Their trucks all have three-axles, silver tanks with red cabs.

Atlantic and others are still representing themselves as collectors for the association. This is not true. Waste oil is also still being stolen at night. Please take the precautions necessary to guard against this theft. Please fill out and return this coupon below in the enclosed envelope.

---

[illegible]
ATTORNEY GENERAL

[illegible]
GEORGE A. NILSON
DEPUTY ATTORNEYS GENERAL

CHIEF
ANTITRUST DIVISION

Exhibit 7

THE ATTORNEY GENERAL
ANTITRUST DIVISION
ONE SOUTH CALVERT STREET
8TH FLOOR
BALTIMORE, MARYLAND 21202
301-383-2081

April 24, 1979

Victor Rasheed, Executive Director
Greater Washington/Maryland Service
Station Association
9200 Edmonston Road
Suite 212
Greenbelt, Maryland 20770

Dear Mr. Rasheed:

In your February 6, 1979 Action Bulletin No. 3, you urge member/dealers to increase their prices because of new stand-by, emergency gasoline pricing controls and allocation regulations recently released by the federal Department of Energy. Because your members are competing businessmen, your recommendation raises serious antitrust concerns.

We interpret your recommendation as a invitation to your members to raise their prices to non-competitive levels. Should this recommendation be accepted, an agreement among competing businessmen affecting their prices will have been completed. Such agreements are per se unreasonable and therefore illegal under Maryland and federal antitrust laws.

We recognize that there is a fine distinction between keeping your members informed regarding important new regulations that effect their businesses and encouraging price collusion. Your Action Bulletin No. 3 may have crossed that line. Although we cannot say that the Attorney General will not pursue an antitrust action against you and your Association should evidence of an agreement among dealers to raise prices be forthcoming, we strongly recommend that you undertake the following actions to dispell the effects of your February 6th Bulletin.

Victor Rasheed, Executive Director (Page 2)
April 24, 1979
Page 2

First, immediately inform your dealer/members that as independent businessmen they must make their own judgments regarding prices.

Second, inform your dealer/members that acceptance of the recommendations in your February 6th Action Bulletin regarding retail prices could subject them to antitrust liability.

Third, notify your dealer/members of the Attorney General's concerns by distributing a copy of this warning letter to them.

As gasoline shortages become increasingly serious, the members of your Association should recognize that any allegations of price collusion or concerted price gouging by dealers will be thoroughly investigated and prosecuted by this Office. Illegal profiteering at the expense of Maryland motorists will not be tolerated. By the enactment of innovative gasoline marketing legislation, the Maryland General Assembly shown confidence in your claims that without unfair competition from company operated stations, vigorous competition among retail dealers will continue to exist. Any indication that the competitive environment among your dealers has been restrained by your Association's activities will be promptly dealt with in the future.

Please contact me if you have any questions regarding this matter.

Very truly yours,

Charles O. Monk, II
Assistant Assistant General and
Chief, Antitrust Division

COM:ph

**Exhibit 8**

Reprinted from:
THE BALTIMORE SUN
April 29, 1980

(with permission)

# 160 gas stations in Md. ordered to reduce prices

By KAREN E. WARMKESSEL

The federal Department of Energy has ordered more than 160 service station operators in Maryland to roll back their prices and pay fines totaling $25,000 for overcharging customers for gasoline.

The overcharges totaled $50,000, and the dealers have agreed to "pay back" that amount to their customers by rolling back prices below their maximum price ceiling for a time, the department said.

Each dealer was fined an average of $154, a department spokesman said. He could not say what the highest and lowest fines were.

In addition to ordering fines and rollbacks, federal energy officials issued warnings to 300 other service stations in the state who were also alleged to be overcharging, but by lesser amounts.

*List of Maryland service stations found overcharging for gasoline......A9*

The actions are the result of a 1½-month investigation of about 550 stations in the state by the department's Office of Enforcement, which was prompted by a survey earlier this year by the state comptroller's office. The comptroller's survey found that one of every five stations in Maryland was charging more than federal price regulations allowed.

In doing the survey, auditors from the comptroller's office visited 2,173 of Maryland's 3,300 stations. No other state has ever undertaken such an exhaustive survey of gasoline prices, federal energy officials said.

In the Department of Energy's own investigation, investigators visited more than 300 stations and audited the dealers' books, according to Jack Vandenberg, a spokesman for the department's Economic Regulatory Administration.

In issuing the warnings, however, the department relied on the information supplied by the state comptroller's office, he said.

Of the stations that were audited, 160 of them were found to be overcharging, a few by as much as 11 cents a gallon. The average overcharge was about 2 cents a gallon, Mr. Vandenberg said.

The largest number of stations were in Prince Georges county, Montgomery county, Baltimore and Baltimore county.

Another 150 stations were found to be in compliance, Mr. Vandenberg said, and 35 stations still have to be audited.

Nearly all of the stations found to be overcharging have signed consent orders with the department, thereby agreeing to pay the penalty and roll back prices to ceiling levels or below. Some may already have rolled back their prices as directed, Mr. Vandenberg said, because they were audited more than a month ago.

Fines were assessed according to the amount of overcharging involved and the length of time for which the violation occurred, Mr. Vandenberg said.

In signing the consent agreements, the department does not officially charge the stations with any violations and the dealers do not admit or deny guilt.

However, two dealers who are alleged to be in violation have contested the department's findings. As a result, energy officials have issued them notices of probable violation, and they will have an administrative hearing.

If found in violation, they will have to roll back prices and pay fines.

These two dealers, whom Energy Department officials declined to name, are alleged to have overcharged customers by more than $2,200.

The department's list of stations signing consent orders named only 134. The others were not listed because of a department policy of not releasing names until 10 days after an order is signed, Mr. Vandenberg said.

A final list will be issued later.

The maximum price ceilings are different for each dealer, and are determined by a formula developed by the department.

Dealers take the wholesale price they pay for their gasoline and add on 16.1 cents a gallon to pay for their operating expenses and profit margin. They add the state and federal taxes onto that amount to come up with their ceiling.

At the time of the audits, which took place in March and April, gasoline cost more than $1.20 a gallon at most stations.

In the letters of warning to the 300 dealers, the Energy Department reminded the dealers how to compute their price ceilings and told them that if they are overcharging they should roll back prices immediately.

If the dealers who were warned are found to be overcharging in the future, they will be dealt with more severely, Mr. Vandenberg said.

He would not reveal the amount by which these dealers were alleged to be overcharging. To do so, he said, would be to alert service station operators as to how much they can overcharge while receive only a warning instead of a fine.

Officials of the state comptroller's office and the Department of Energy yesterday praised the cooperation between the state and federal agencies in the investigation.

After completing its survey, the comptroller's office had turned over all its information to the department.

"The initiative and cooperation by Maryland officials is an excellent example of benefits to consumers that result from effective coordination between federal and state governments," the department said.

EXHIBIT 9

## AVERAGE WEEKLY HOURS OF OPERATION
## BY BRAND IN OHIO[a]

| | 1968 | 1969 | 1970 | 1971 | 1972 | 1974 | 1978 |
|---|---|---|---|---|---|---|---|
| All Majors | 110.0 | 109.8 | 111.2 | 112.6 | 112.0 | 95.4 | 103.3 |
| Sohio Company | 139.0 | 132.9 | 132.1 | 129.9 | 127.7 | 115.5 | 112.4 |
| Sohio Dealer | 106.1 | 106.3 | 108.2 | 110.0 | 109.8 | 102.4 | 102.3 |
| Private Brand | 132.0 | 128.6 | 125.7 | 125.9 | 125.8 | 104.6 | 112.1 |
| All Other Majors ex. Sohio | N.A. | 108.7 | 110.0 | 111.2 | 110.4 | 89.7 | 100.2 |

[a] Hours of Operation Survey not taken in 1973, 1975, 1976 and 1977.
N.A. = Not Available

Source: Annual Hours of Operation Surveys.

EXHIBIT 10

SOHIO THE STANDARD OIL COMPANY
MIDLAND BUILDING, CLEVELAND, OHIO 44115

R. G. GRIFFIN
VICE PRESIDENT, MARKETING

October 29, 1979

The Honorable Berkley Bedell
Chairman, Subcommittee on Antitrust and
Restraint of Trade Activities
Affecting Small Business
B-363 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of October 17th in which you inquire about apparent inconsistencies between my testimony before your Subcommittee and a document known as the BP Northeast Project Report. My statements and the contents of this report are not inconsistent. I appreciate the opportunity to clear up any confusion which may exist. In order to avoid any further misunderstanding, some background on the BP Northeast Report and Sohio's BP branded marketing territory is helpful.

Sohio's gasoline marketing business is split into two distinct territories - the Sohio branded territory which consists of Ohio and the four contiguous states, and the BP branded territory which generally comprises the mid-Atlantic states. Sohio has marketed in the Sohio territory since 1912 and is currently the largest gasoline retailer in Ohio. In contrast Sohio has been doing business in the BP territory only since 1970 and has a relatively small percentage of the gasoline market in that area. Until February of 1978 when a reorganization put both the Sohio branded territory and the BP branded territory under my direction, the two territories were separately run and had different marketing vice-presidents. I was vice president for the BP territory from 1970 until May 1972 at which time I became vice-president for the Sohio branded territory.

The Honorable Berkley Bedell
October 29, 1979
Sheet 2

The retail marketing facilities in the BP branded territory were acquired by Sohio in its 1970 merger with the British Petroleum Company. British Petroleum had in turn acquired the facilities from the Sinclair Oil Corporation when sale of those properties was required by the Justice Department as a condition of approval of the merger between Sinclair and Atlantic Richfield. Many of these old Sinclair properties were run down and outmoded and the stations as a group could not be operated profitably.

Beginning in 1970 when it acquired the properties, Sohio made large investments in upgrading old stations and constructing new ones in an attempt to put BP branded marketing on a profitable basis. Unfortunately these efforts with all dealer operation were unsuccessful and in the first 3 years of conventional operation Sohio's losses approximated $150 million. Faced with the prospect of continuing losses of the same magnitude Sohio had to decide whether it should sell off the properties and withdraw from the BP branded territory or whether it should try a different marketing format in this territory. The BP Northeast Report was a study prepared in connection with this decision.

The BP Northeast Report, which generally recommended converting stations to low-price, high volume gas only outlets in large metropolitan areas while continuing full service dealer operations in outlying areas, was presented to Sohio's Management Committee in the Spring of 1973. While the Committee approved in principle the concept of Gas 'N Go operation it rejected many of the strategies suggested by the BP Northeast Report for achieving the changeover. In particular, the strategies for dealer conversion suggested by the Report were not approved and BP's marketing management was told to develop a new plan for conversion of the BP territory.

The new plan, which was approved and implemented, is set forth in a letter dated September 26, 1973 from C. H. King, who was then vice-president of marketing in the BP branded territory. A copy of that letter is attached. The key elements of the revised plan were that of the 2,600 stations on the east coast many were rebranded from BP to Wm. Penn and some 70 stations in the urban sections of the territory were converted from dealer operation to company run Gas 'N Go stations. Dealers at the stations being converted were offered the choice of managing the converted station as a BP employee, moving to a Wm. Penn station as a dealer or purchasing stations which BP had decided to sell as part of the restructuring.

The Honorable Berkley Bedell
October 29, 1979
Sheet 3

Ten dealers operating stations which were being converted in the Baltimore-Washington area rejected the various options and brought suit in the Federal District Court in Baltimore alleging that BP's intention to replace certain dealers with company operated Gas 'N Go stations was a violation of the antitrust laws and other claims. The District Court after analyzing BP's market conversion including the BP Northeast Report dismissed the antitrust claims. On appeal the U.S. Court of Appeals for the Fourth Circuit affirmed the dismissal and ordered judgment entered on all counts in favor of BP. Thus, both Sohio's actions in implementing conversion in the northeast and the principle of the Gas 'N Go conversion itself have been declared legal by the Federal Courts. The decisions in this case are reported at 534 F.2d 623 and 403 F.Supp. 568.

While this background has been somewhat lengthy, I believe it shows clearly first that the BP Northeast Report has never represented the policy of Sohio in either its BP or Sohio branded territories and second that the Report has had nothing whatever to do with the Sohio branded marketing territory. This second point is basic to eliminating the misunderstanding expressed in your letter about my testimony. All three of the quotations from my testimony set out in your letter relate to a discussion of the Sohio branded market. My remarks were addressing the reasons for the increase in sales through company stations in Ohio over the period 1972-1979 and the restructuring of the Ohio market discussed in Sohio's 1978 annual report. Review of the transcript starting at page 32 makes this clear. My quoted remarks on page 63 are also clearly addressed to the Sohio branded market since, as I stated above, I became vice president for Sohio branded marketing in 1972.

However, it is also fair to say that I do not believe anything in my testimony is inconsistent with Sohio's actions or policies in either its BP or Sohio branded territories. Interpretation of events depends, of course, on perspective and, as Mr. Ichord established at the hearing, we are all biased from our particular point of view. But I would not characterize the conversion of 70 dealer stations to company Gas 'N Go's as a "mass program to eliminate dealers", certainly not in light of the many stations which were rebranded and continued as dealer outlets and the opportunity extended to the dealers in the converted stations to continue as dealers in new locations. There never has been a policy in either the Sohio or BP branded territories to convert dealer stations to company operation because a dealer has raised sales volume to a certain level, and nothing in the Northeast conversion or the Ohio restructuring would support any such notion. Finally, our actual experience over the last few years demonstrates that both company and dealer stations are closed as the market moves to fewer, centrally located, high volume outlets.

The Honorable Berkley Bedell
October 29, 1979
Sheet 4

As I stated in my testimony, I firmly believe that refiner operated service stations are an important factor in maintaining competition in the retail marketplace. As an illustration of this fact I would like to take this opportunity to offer into your record several editorials and letters which expressed appreciation for the manner in which Sohio adjusted the hours of its company operated stations in order to have stations open evening and weekend hours during this past summer's gasoline crunch. Sohio company stations were frequently the only stations open for gasoline sales during those hours. This is only one illustration of the customer benefits of continuing competition by company operated stations in the retail market.

Very truly yours,

R. C. Griffin

RCG/lao
Attachment

cc: The Honorable Dan Quayle, Ranking Minority Member
Subcommittee on Antitrust and Restraint of Trade
Activities Affecting Small Business
Members of the House Small Business Committee
Department of Justice
Federal Trade Commission
Small Business Administration

**BP Oil Corporation** [illegible] Plaza Wilmington, Delaware [illegible] Phone (302) 658-6711

September 26, 1973

TO: BP DEALERS, DISTRIBUTORS, MARKETERS AND EMPLOYEES

Over the past four years, BP Oil Corporation has committed substantial new capital and has withdrawn from the market in several states in an effort to reduce the losses that existed at the time of the acquisition by BP of the East Coast Sinclair properties. Although progress has been made, these operations as currently structured continue to operate at a loss. Market research and tests of special marketing concepts during this period demonstrate that BP Oil can improve its operating results and better serve its customers by adding a gasoline-only concept while retaining a full-service dealer organization.

In the greater metropolitan areas of Washington, D.C., Baltimore, Maryland, Philadelphia, Pennsylvania, Westchester and Rockland Counties, New York, Long Island, Wilmington, Delaware, and Northern New Jersey, some 450 lessee-dealer and jobber operated BP stations will be rebranded "William Penn", a trademark that has been owned by and associated with products distributed since 1929 by BP's parent firm, The Standard Oil Company (Ohio). Another facet of this program is that some 70 dealer operated locations throughout these metropolitan areas will be converted and rebuilt to gasoline-only outlets under the "BP" brand. These stations will offer fast, efficient service to the motoring public at prices which will be reflective of the saving in operating costs inherent to the gasoline-only concept.

At the expiration of their leases, all dealers at locations identified for use in the BP program will be offered an attractive incentive compensation program as employee-manager of the new stations. This program offers the managers excellent earnings potential with no financial investment. If any of these dealers prefer to remain in the conventional service station business, every effort will be made to relocate him to a "Wm. Penn" station in the same area.

BP Oil Corporation's home heat oil customers and consumer-industrial customers in these metropolitan areas will not be affected by this change.

The balance of the marketing territory outside the specific metropolitan areas referred to above will retain the BP brand and programs will be announced shortly that will strengthen our distributor program for serving these markets.

For some months, BP Oil has not been able to supply petroleum products at a level sufficient to meet 100% of our customers' needs. As a result, gasoline and distillate have been allocated to all customers on an equitable basis. This policy will not be affected by the new marketing program.

A few of our outlets have already been identified and approved for sale. Dealers in these locations who have an interest in acquiring the real estate should notify their sales representative or local district office.

I am sure each of you have many questions regarding the specific effect these changes will have on you, and I encourage each of you to consult with your salesman or local managers for clarification and communication to us regarding your plans. Our objective is to accomplish this major transition with a minimum of dislocation and inconvenience to our distributors and dealers.

Very truly yours,

Chas. H. King
Vice President

CHK/bsf

BERKLEY BEDELL, IOWA
CHAIRMAN
JAMES M. HANLEY, N.Y.
HENRY B. GONZALEZ, TEX.
RICHARD H. ICHORD, MO.
TONY P. HALL, OHIO
TOM STEED, OKLA.

DAN QUAYLE, IND.
OLYMPIA J. SNOWE, MAINE
THOMAS J. TAUKE, IOWA

MARC H. ROSENBERG,
SUBCOMMITTEE PROFESSIONAL STAFF
MEMBER
202-225-[illegible]

AARON DAVID HOPPE,
MINORITY SUBCOMMITTEE PROFESSIONAL
STAFF MEMBER
202-225-[illegible]

United States House of Representatives
Committee on Small Business
Subcommittee on
Antitrust and Restraint of Trade
Activities Affecting Small Business
B-363 Rayburn House Office Building
Washington, D.C. 20515

October 17, 1979

Mr. Robert Griffin
Vice-President of Marketing
Standard Oil of Ohio, Washington Office
Suite 650
1050 17th Street NW
Washington, DC 20036

Dear Mr. Griffin:

On behalf of the Antitrust Subcommittee I wish to thank you for your appearance before the Subcommittee on September 20, 1979, to discuss the gasoline marketing practices of the SOHIO Corporation. We especially appreciated the candor of your remarks.

As you are aware, the September 20th hearing was one in a series of hearings conducted by the Antitrust Subcommittee to determine if the alarming decline in independent and lessee gasoline station operators is a result of normal marketplace functions or anticompetitive tendencies within the industry.

On October 11, 1979, the Subcommittee heard testimony from Milton Stewart, Chief Counsel for Advocacy at the Small Business Administration. Mr. Stewart entered into the hearing record a copy of an internal SOHIO document, The BP Northeast Project, Report and Recommendation, dated May 9, 1973. There appear to be some inconsistencies between portions of your testimony and statements found in this SOHIO document. Consequently, we would appreciate your assistance in reconciling those differences.

The internal SOHIO document, The BP Northeast Project, May 9, 1973, was obtained by the Greater Cincinnati Gasoline Dealers Association through legal action. As mentioned earlier, it was entered into our hearing record on October 11, 1979. The scope of this report, quoting from its text, is "to consider all of BP's marketing operations in the Mid-Atlantic and Northeast regions..." The report recommends "that BP adopt a Gas & Go marketing approach in its major metropolitan areas."

Enclosed is a photocopy of the section of The BP Northeast Project report that outlines actions BP and its parent company SOHIO should undertake during the anticipated transition from an independent and lessee station marketing system, to a BP owned and operated Gas & Go marketing system. Statements from this section of the report appear to contradict your testimony before the Antitrust Subcommittee. We find it remarkable how closely SOHIO's marketing strategy seems to be following the path laid out in The BP Northeast Project. The section of the report that is of greatest concern is found on pages 26-29.

During the question and answer session with the Subcommittee you made the following statements in response to the members' concern about the declining role of the independent and lessee station operators in SOHIO's marketing plans:

- "We have not had any mass program to eliminate dealers against their wishes. Most of the change has occurred by attrition for one reason or another..."
- "I can categorically say that since 1972, since I have been Marketing Vice-President, we have had no policy to displace dealers with company operations based on some volume. Some dealers may perceive that from his viewpoint depending on what his experience was, but that shouldn't be construed as company policy because that isn't so."
- "...we would continue to eliminate locations, whether they be company or dealer operated, that are no longer economically viable."

Clearly, those remarks are not consistant with either the general tone or the specific comments found in The BP Northeast Project report.

The Antitrust Subcommittee is concerned about the seeming contradictions between your statements on September 20th and the document we have that outlines SOHIO's BP brand marketing policy.

We feel that as SOHIO's Vice-President for Marketing, and the company's representative before our Subcommittee, you must have been aware of these internal policy recommendations and the inconsistancies in your public statements. It is for this reason we invite your comments to help clarify the record being developed by our panel.

We look foward to your reply, for inclusion in the record.

Sincerely,

Berkley Bedell

[illegible]

## EXCERPT FROM BP NORTHEAST PROJECT REPORT, PAGES 26-29

### III. THE TRANSITION PERIOD

Any changeover in operation of the magnitude proposed herein is bound to be difficult and accompanied by a variety of problems. The usual business problems of keeping one operation going while converting to another are now complicated by legal questions concerning our ability to obtain possession of our dealer-operated stations and to permit our contracts with distributors to expire.

New Jersey and Virginia have passed franchise acts giving dealers certain rights of possession despite a lease between a supplier and the dealer, and lower courts in Pennsylvania and New York have arrived at the same conclusion by judicial fiat. Injunctions in favor of dealers delayed our Philadelphia program and we must anticipate similar problems elsewhere. At least we can now attempt to devise strategies to deal with the problem, although the law on the subject is still clouded. Equally uncertain is whether BP will be forced to continue supplying distributors after the expiration of the jobber contract, and, if so, under what terms and conditions. Our large New York distributor, Speigel & Sons, has already filed suit to prevent our termination of supply under his contract which expires on June 10.

In view of the obstacles facing the complete conversion to Gas & Go, the suggested target date is mid-1974. Our preliminary planning has assumed that while some units will be open before that time, we should not anticipate having the total conversion effective prior to then.

There are a number of problems which must be considered in converting from the existing retail operation to Gas & Go. There are some differences in priority between the items, but a list of those items pertaining to our new operation will include the following: (1) obtaining possession of stations to be used, (2) the identification of prospective purchasers (particularly non-petroleum ones) of our divestment stations, (3) the packaging of the divestment stations for sale, (4) the layouts of our new units, (5) preparation of engineering plans for both new units and conversions, (6) the obtaining of building permits, (7) negotiations with contractors, (8) the organization of construction supervision and the real estate effort, (9) preliminary hiring plans and tentative wage rates for each area, (10) the determination of pricing areas for the new units, (11) a current analysis of the brand name to be used in each area, and (12) our distributor situation.

The two items of highest priority are to secure possession of those units we desire to use in the Gas & Go program and to commence the divestment of other outlets. There are several things we can do to assist us in the possession problem. The first is to continue the conversion of desired units to I-Manager and Salary wherever possible. A conversion to I-Manager and some Salary operations has been under way for reasons which have nothing to do with the Gas & Go program, and we now have eight proposed Gas & Go stations in Washington and seven in Baltimore which are so operated. A continued effort in this field will help solve the possession problems without alerting the dealer organization to our ultimate plans. There is also the opportunity to effect mutual cancellation of leases, provided the date is a few months in the future. Experience demonstrates that many DR's are willing to seek new locations provided they are given the opportunity to relocate without suffering the loss of income in the interim. (Now that we are aware of our legal problems, we should pursue this possibility.) Small amounts of reimbursement to the dealers may also induce them to vacate our stations in some cases. Usually this will be in the form of paying for the moving of the dealer's inventory and equipment or the forgiveness of small indebtedness. (These were requests which we refused in Philadelphia which hindsight indicates we should have agreed to as an alternative to legal action or delay in obtaining possession.

In addition to actions with respect to individual DR's, there are some general actions we should take which will encourage the DR's in our Gas & Go stations to seek other locations. The first is to announce a new DR rental policy which will make a specific charge for the non-gasoline facilities being leased. This can be additional to a gallonage rental or be in the form of a minimum which is high enough to make the gallonage rental irrelevant. Since this can be established on a specific station basis, it should assist us in obtaining those units we want without driving off those dealers we desire to retain. Another change which should be instituted immediately is to require dealers to forward credit tickets to Cleveland for reimbursement, rather than grant the DR's immediate credit at the local level. Both of these changes will increase our profits in the short run, as well as assist us in obtaining possession.

The abandonment of the ADS delivery system and the institution of C.O.D. deliveries should also be instituted, but because of the impact of this on the dealers, it should not be done prior to the fourth quarter of this year.

We should terminate our advertising soon after the program is approved and also stop reissuing credit cards. When we think we have done all we can about possession of individual stations, we should probably make a general announcement indicating that we are ending our conventional marketing programs in order to discourage any remaining dealers in locations we want from continuing to operate. The wisdom and timing of such an announcement should depend on our divestment efforts, since we do not want dealers in units to be divested to depart prematurely.

Despite the above actions, there will undoubtedly be some dealers who will refuse to vacate their stations. (We have incorporated the amount of $250,000 in the economics to cover the cost of buying out those dealers who are willing to settle for a reasonable price.)

We also recommend the adoption of a new dealer tankwagon structure to cover those cases where all else fails. While dealer operation is not desirable at the present time, the new structure will at least give us a vehicle to incorporate a dealer operation in the Gas & Go plan at costs which we can afford. The recommended new structure is as follows:

REGULAR GRADE GASOLINE

| Retail price | Retail ex tax | Present DTW | New DTW | Present dealer margin | New dealer margin |
|---|---|---|---|---|---|
| 37.9 | 25.9 | 18.7 | 18.7 | 7.2 | 7.2 |
| 36.9 | 24.9 | 18.0 | 18.7 | 6.9 | 6.2 |
| 35.9 | 23.9 | 17.3 | 18.7 | 6.6 | 5.2 |
| 34.9 | 22.9 | 16.6 | 18.2 | 6.3 | 4.7 |
| 33.9 | 21.9 | 15.9 | 17.7 | 6.0 | 4.2 |
| 32.9 | 20.9 | 15.2 | 17.2 | 5.7 | 3.7 |
| 31.9 | 19.9 | 14.5 | 16.2 | 5.4 | 3.7 |
| 30.9 | 18.9 | 13.8 | 15.2 | 5.1 | 3.7 |
| 29.9 | 17.9 | 13.1 | 14.2 | 4.8 | 3.7 |
| 28.9 | 16.9 | 12.4 | 13.2 | 4.5 | 3.7 |

The divestment activity should start as soon as possible. The identification of non-petroleum buyers who may be logical purchasers of some of our excess stations is an item of highest priority. When we have some reasonable idea of the number of stations which must be sold for petroleum use if BP is to obtain a reasonable price, we can consider the packaging of these units for sale. A trade of a package of Baltimore stations for competitive ones in Northern New Jersey, Eastern Pennsylvania or Long Island is one possibility. In most other areas, we will probably have to sell the petroleum sites as small packages or individually.

The conversion of some stations into tire stores or automotive shops is a possibility. Some of our resellers, and perhaps some suppliers, may have an interest in additional retail outlets and we will be in a position to offer such additions at a reasonable cost.

Those stations without much potential as gasoline outlets will undoubtedly be a problem in today's market. Several courses of action should be pursued. We should close the stations in situations where the gasoline-use permit has no great value and pursue non-petroleum sales. We should buy a mutal cancellation of existing leases where this can be effected at a reasonable price. Many of our DR's are essentially in the garage business at the present time and we can sublease many locations for garage use only without great loss in rental. In these cases we should remove our pumps and identification and allow the dealer to operate as a garage for the balance of the lease term.

There are many locations which we probably could have sold or assigned to a competitor in the past where such action is difficult today because of the supply situation. If we can get a reasonable price by doing so, we should consider supplying an outlet at current volume levels for a period of up to three years. We would obviously prefer not to supply any such outlets, but we should consider this question on an individual basis and measure the possible loss on the supply versus our real estate position. In some instances the income from the sale or assignment may dictate that we should make short-term supply available.

The brand name question is an important one in all markets. In Long Island and Northern New Jersey, as in Philadelphia, we have distributors who complicate the question. In the other markets, the issue is confined to our success in ridding ourselves of controlled and dealer outlets. We do not think that BP should operate a Gas & Go chain under its own name in a market which has a significant number of other BP stations in operation. This raises the question whether we should open as

"Gas & Go" in such markets or rebrand the existing outlets. it has been estimated that we would incur a cost of about $500 per station to rebrand existing stations by changing the sign panels. changing the insets in the building and removing the pump identification. We think that a decision on this issue in each market should be deferred until about December 1, at which time we should know the number of units which must be rebranded if we are to use the BP name in each market.

We recommend that we proceed with the rebranding of our Philadelphia distributors, Mauger and Delaney, at the present time. Mauger's contract does not expire until 1975 and it does not appear that he will find a new supplier. Rebranding the Philadelphia distributors now to the "Wm. Penn" brand would allow us to use "BP" in Philadelphia, determine the legal problems, if any, arise from the rebranding and obtain the actual costs involved in the rebranding. It is estimated that about $25,000 will be spent on rebranding the Philadelphia distributors.

The other matters to be handled by the development group do not seem to require any particular discussion. We believe that the formation of the group, which can devote full time to the transition strategies, will be of great benefit in minimizing uncertainties during the transition period and in getting BP ready to operate as a Gas & Go chain.

## IX. SECONDARY MARKETS

If BP becomes a Gas & Go operator in the primary markets, we recommend operating only through distributors in the secondary markets. Existing marketers will either be converted to distributors or divested. There are a number of reasons for not attempting a direct operation at this time. The potential of many of these areas for a successful Gas & Go operation is questionable, and we should consider direct operation only when we know more about this business. During the transition period while BP is adopting a Gas & Go posture in the major markets, a distributor is in a better position to tailor his retail operations to local conditions than we would be. Certainly the TBA and service issue is different in small towns than in major metropolitan areas because of the absence of competition from car care * * *.

## EXHIBIT 11: TEXACO INC.

TEXACO
INC.

1050 SEVENTEENTH ST., N. W.
WASHINGTON, D. C. 20036

June 16, 1980

Honorable Berkley Bedell, Chairman
Subcommittee on Antitrust and Restraint of Trade
of The Committee on Small Business
405 Cannon House Office Building
Washington, D.C. 20515

Dear Mr. Bedell:

Enclosed is the statement of Texaco Inc. to be filed as part of the record on the hearings on the "Small Business Motor Fuel Marketer Preservation Act, HR 6722" and related bills.

We appreciate the opportunity to make our views known on this vital subject. If any questions arise with respect to this matter, please do not hesitate to contact us.

Respectfully,

J. Donald Annett

J. DONALD ANNETT
VICE PRESIDENT, TEXACO U.S.A.
A DIVISION OF TEXACO INC.

JDA:ceh
Enclosure

CC: Members of Subcommittee on Antitrust and Restraint of Trade of The Committee on Small Business

STATEMENT OF

TEXACO INC.

BEFORE THE

SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCE

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

AND

SUBCOMMITTEE ON ANTITRUST AND RESTRAINT OF TRADE

OF THE

COMMITTEE ON SMALL BUSINESS

U.S. HOUSE OF REPRESENTATIVES

SMALL BUSINESS MOTOR FUEL MARKETER PRESERVATION ACT,

H.R. 6722 AND RELATED BILLS

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# STATEMENT OF
# TEXACO INC.
# REGARDING
# SMALL BUSINESS MOTOR FUEL MARKETER PRESERVATION ACT, H.R. 6722 AND RELATED BILLS

The following comments are made relative to the H.R. 6722 "The Small Business Motor Fuel Marketing Preservation Act of 1980". Texaco appreciates the opportunity to present its views on the subject.

Texaco has been marketing petroleum products since 1902. Much of Texaco's growth since its inception can be credited to its retailers and wholesalers.

Presently Texaco sells direct through approximately 7697 retail stations. Of this number only 34 or less than 1% are company operated or contractor operated. The Texaco retailers and wholesalers have been and continue to be the life blood of the corporation. Therefore, it is with deep concern and interest that Texaco views HR 6722 and the effects that it would have on our retailers and wholesalers.

We share the Committee's concern with problems the retailer has faced and will face in his business, but it should be made very clear that major refiners have not created the problems confronting these retailers. Major refiners have attempted to assist retailers in solving some of the problems they are facing, specifically in aiding retailers to adjust to changing market trends, such as self-service marketing of fuels.

We are also concerned with the problems confronting retailers in the non-gasoline portion of their business. It should be emphasized, however, that the problems are generally demographic, skill-related, or competitive in origin, and cannot be resolved by divorcement.

These problems are normal in a competitive market and represent positive signals for change. A dynamic competitive market will solve the problems within its own mechanisms to the degree to which the participants respond to the signals. Legislation designed to halt this process is not in the interest of any of the participants - neither refiners, retailers nor consumers.

## DIVORCEMENT OF SALARY OPERATED STATIONS

The main thrust of the legislation, separation of the major refiners from direct service station operation, is an artificial marketing restructuring device that will lead to less competition and higher consumer prices. The legislation deals with a problem that does not actually exist.

The findings of the recently completed Part I, Title -III study of competition in gasoline marketing by the Department of Energy offers substantial support to the position taken by major refiners that they have not been unfair or discriminatory toward independent retailers. The findings indicate that major refiners have not subsidized refiner-operated stations. It also states these refiners are not guilty of predatory pricing.

Interestingly, the report also indicates that allocation regulations have created the appearance of predatory behavior in the marketplace. Regulations have permitted branded jobbers and independent marketers to increase their allocation and have allowed refiner operated stations to remain relatively constant in allocated product. Dealers, the report indicates, are the principal losers under the current allocation system. Our company has recognized this inequity and has actively solicited the Department of Energy to allow the redistribution of product within SMSA's (Standard Metropolitan Statistical Area) in the event of station closure. To date, our efforts have not been successful, but it does indicate our concern in assisting the industry in solving basic retailer problems. The proposed legislation ignores this basic problem and does not propose any remedy.

Several diverse studies, which have been filed with the committee, have indicated the consumer will suffer economically if the divorcement is passed. Professors L. M. Lamont and C. F. Phillips, Jr. of Washington and Lee University conclude in their study that divorcement could "...result in higher gasoline prices and less convenience for the consumer." Two other professors, Mr. C. E. Krider and Mr. Eric L. Richards of the University of Kansas believe that "...the price of such an end will be high to consumers." Finally, the Petroleum Industry Foundation, Inc. has concluded that the result of passage would be a less competitive market with higher gasoline prices.

If retailer frustration with government regulations is at the root of this legislation, the frustration should be directed at the morass of regulations perpetuated by them. Certainly a point of discussion has been achieved when the agency charged with the responsibility of administering allocation regulations acknowledges there are allocation inequities.

In reflecting on regulations, the observations of Assistant Attorney General John Shenefield of the antitrust Division of the Department of Justice should be emphasized. His testimony before the Virginia Legislature regarding divorcement supports contentions that H.R. 6722 is anti-consumer, anti-competitive, and unnecessary.

Mr. Shenefield's observations that government must constantly be on guard against passing laws and regulations which "...inhibit competition by placing the interest of individual competitors above the interest of all consumers" reinforces the belief that only a small number of individuals would benefit from H.R. 6722 at the expense of all other consumers whom it would injure or penalize economically.

The consumer is the basis of business for all facets of our industry - the refiners, the wholesalers, and the retailers. We all entered business with the intent of being successful by satisfying consumer demand. The proposed bill would reverse this natural process. With the proposed elimination of a competitive factor of the market (refiner operated stations), consumers could find themselves in a position where one of their alternatives will no longer exist.

Indications are that the proposed legislation would be costly to the consumer. Virtually all studies and analyses of H.R. 6722 state the consumer would be economically penalized by its passage. Even the pro divorcement reports do not indicate any possible consumer benefits would be derived from the bill's passage. How will the American consumer and consumer advocates respond to the imposition of this radical change and probable economic burden?

A competitive market, unburdened with regulations, will sort out the most economical and efficient strategies. As a matter of fact, regardless of who led the move to high volume, low margin outlets, it is obvious this strategy has strong consumer appeal. This type of competition will confront the retailers whether the legislation is passed or not. The retailer must make a response if he is to stay in business. The strategy of high volume, low margin is a fact and the retailer response to the condition cannot be legislated.

The proponents of divorcement document some of the problems created for independent retailers by jobbers operating low margin outlets. Mr. Lane's comments before the Small Business Committee support the alleged wholesaler advantage (a 9% increase in allocation by class of trade) over the independent retailer (a 1% increase in allocation by class of trade). The unbalanced allocation percentages can be misinterpreted as indicating wholesalers have taken advantage of regulatory commissions. In fact, the percentages substantiate the unfair governmental restraints which have been placed on retailers as a class of trade.

## RACK PRICING

We are opposed to the legislative imposition of rack pricing. Rack pricing may well be the method of distribution in the future. Many refiners are presently investigating the possibilities of a rack pricing system. The market should be allowed to evolve to rack pricing as conditions dictate.

The question of open supply could cause innumerable problems for both wholesalers and consumers. Although companion provisions allow for a reasonable surcharge for refiner provided benefits, and also provide that reasonable notice at the point of sale be given to purchasers of such motor fuel that it is not provided by the refiner, the costly administration of these unnecessary provisions will apparently be borne by the refiner. Consumers would no longer be able to determine what quality products are available from the trademark signs of outlets at a glance. They would have to enter a station before they could discover whether the anticipated product is available. In essence, the right to purchase, store, and sell any available product will subject the consumer to a form of fraud. The trademark sign implicitly indicates the refiner's products will be available, and when they are not, the consumer has been deceived.

Quality of product manufactured could easily fall to the minimum standards. Open supply could remove all incentives to insure a quality product. Brand integrity could become relatively unimportant as refiners would be unable to determine with any reasonable accuracy where or to whom the product will ultimately be sold. The retailers and wholesalers who would choose to operate outside their normal supply arrangements could anticipate consumer confusion, probable mistrust, and errosion of personal confidences. Open supply capability by the retailer further depresses any interest in a supplier's making commitments in additional facilities. Any incentive to invest in changing or growth areas will be eliminated.

As we understand the intent of the "Open Supply" provision, it would have twin objectives of allowing retailers to shop for cheaper gasoline and also to make up for short supplies of his refiner. In our opinion, it is questionable whether "Open Supply" could result in those benefits, if present government regulations relative to price and allocation were strictly enforced.

## SUMMARY

This proposed bill's avowed intent is to "...restructure the gasoline retail marketplace". The proposed bill will not remedy a confused marketplace which has been created by previous legislative and regulatory restrictions. Market restructuring has certainly occurred, but it has been achieved through the classic economic evolutionary pattern of supply and demand, and the resultant profits or losses. In other words, in a competitive system, restructuring is a continuing process, but it is a natural process - one which cannot be legislated into existence. The proposal omits the catalyst of meaningful and realistic marketing changes -- the American consumer.

Legislation exists today in the form of antitrust laws and the Petroleum Marketing Practices Act, to preserve the independent marketer segment of the gasoline retail market. With the adequate protection these afford retailers, we question the need for what appears to be redundant legislation, especially since the proposed bill will apparently penalize the consumer.

Special interest legislation is obviously questionable, but any regulation, no matter how well intended, which further alters normal evolved marketing conditions is also questionable. The following quote relative to regulations by the Department of Energy's office of competition clearly states the case against further regulations of any kind.

"Imposing regulations in the market introduces rigidities which cause innumerable things to go wrong with the process. We then try to correct these unanticipated defects by introducing new regulations, which cause more things to go wrong, so we introduce more regulations. But there is no hope of full correction because regulations try to freeze conditions that are inherently dynamic. Full correction of the defects can only be achieved by removing the regulations which have caused them."

## APPENDIX N.—LETTERS FROM PRIVATE CITIZENS RE: H.R. 6722

APR : 5 [redacted]

April 10, 1980

Rep. Berkley Bedell:

I have just read an article on trying to stop these oil companies from having their own stations. I am for this plan 100%. I only pray you people in office can do this. We own a service station in a small town [ in ] Mich., we are paying anywhere from 10 to 14 cents more than they are selling it for. We are hurting very bad and about to be put out of business. I only hope you can get this bill passed as soon as possible. These oil companies are paying some of their dealers two cents a gallon just to pump gas and they pay the taxes, gas, & lights. We pay \$1.16 for reg. and \$1.20 for lead-free plus sales tax. Company owned are selling it for as low as \$1.07, so you see we can't possibly make it. Also they always have gas to sell, but if we need extra gas we have to buy open market gas up to 10¢ more per gallon. I am sorry to say I have lost faith in our government, but after reading this I feel maybe someone in there is willing to help the small business people. May God be with you and help you with this great idea.

...I only pray you dont give up on this plan.

Sincerely yours,

[name deleted]

best copy available

Congressman Berkley Bedell
U.S. House of Representatives
Committee on Small Business
Room B-363
Rayburn House Office Building
Washington, D.C. 20515

Dear Representative Bedell:

I am a Service Station operator in Pittsburgh, Pa. I lease a station from Amoco Oil Company and have been in business at my present location for 10 years. Before that I worked for other Dealers for 12 years.

I have never written a letter to any elected official before, but I feel I would like you to know just a few problems I have encountered in just the last year or two, since you have introduced a bill to help Service Station operators all over the United States.

First, at my location I rent U-HAUL Trucks and Trailers which I have done for the last nine years with Amoco's approval. In January of 1980 I received a letter from Amoco stating that I have 60 days to remove all Rental Vehicles from the lot or they will cancel my lease. So I called the Company Office to find out the reason, as none was stated in the letter. The answer I received was, "We do not have to give you a reason."

At the time I received this letter we were on 70% Allocation of 1978 gasoline business. We do approximately $35,000 in gross rentals of trucks and trailers, for which we receive commission of about $6,300, and I am supposed to just give this up. I belong to the Associated Retail Gasoline Dealers of Pennsylvania and their legal fund only allows $300.00 for lawyers fees and you know how far that will go.

The next thing is gasoline. We are off Allocation now because there has been a change in the public's driving habits, big increases in price, Government Agencys telling people to conserve and most of them have cooperated. At the present time the Companys have more gas than they know what to do with. So their answer to that problem is to have dealers cut their profit margin to sell more gasoline. Since last year service station dealers have been allowed by the Government to make 16.8 cents profit per gallon on gasoline, but very few dealers can get that much.

In my case to try and be competitive, I have been selling my gas at an overall profit of 11.3 cents before expenses. Just today I read in the Pittsburgh Press newspaper that Henry Ford is in favor of a 50¢ tax on gasoline to make people conserve. Today my Sales Representative told me that if I don't increase my volume of gasoline the Company may not renew my lease. So his answer to that problem is to sell gas at cost on the Self Service Island and to cut the price 6¢ on Full Service. And yesterday I received another Registered Letter telling me as of the anniversary date of my lease, which is October 1980, my rent will be raised $197.00 per month. I am still fighting them on the truck rental problem.

Some other problems are; no maintenance except pumps repaired if you can wait till they damn well please, dealers have to do most of their own repairs on a leased building.

Getting back to the gasoline problem, just today which is July 3rd, Boron Oil Company announced on the radio that it was lowering the price of all grades of gasoline 3¢ to a selling price of $1.20.8 for Regular. My Regular gasoline is priced now at $1.22 on Self Serve and $1.24 on Full Service. I am paying $1.13.1 for this which gives me a profit of 10.9¢ out of which comes 3¢ a gallon payed to Amoco on my weekly Gas Reports towards Products purchased and put on my statement. We also have to pay $150.00 per year for Self Serve consol maintenance, $13.00 per year rental for credit card machine, a cash gasoline deposit of anywhere from $2,000.00 for some Dealers to $25,000 for others, mine is $3,800.00 which Amoco holds and does not pay any interest on until the dealer goes out of business or retires.

I don't have to tell you about the cost of utilities in the last few years but I would like to give you an example. I use heating oil at my station and 5 years ago I was paying 21.5¢ per gallon. Last winter the last order I received I paid 89¢ per gallon. The minimum wage has been raised and Insurance premiums are up. In Pennsylvania the cost of Unemployment Compensation Insurance has skyrocketed because of borrowing from the Federal Government. So the portion that businesses have to pay has been raised again.

I think one of the first things that should be done in this country is get rid of the Department of Energy because I think they are being controlled by the oil companys and are overloaded with employees collecting a salary for doing nothing. Until something is changed we will not have an energy policy in this country. Last year 17,140 service stations went out of business. What happens to these people? If they cannot find a job they have to go on Welfare because, being formerly self employed, they cannot collect Unemployment Compensation.

Please do not think all I do is complain, because I still like the service station business and being my own boss, but the line has to be drawn somewhere as to the control the Company has over dealers. There are enough problems in the everyday operation of any business without the Company springing a few on you every couple of days.

I am enclosing a copy of the Amoco Oil Company statement of Dealer Policy because I think this means that I am an Independent Businessman as long as I do what the Company wants. Please do everything you can to get H.R. 6722 passed because all present and future dealers need it.

Thank you,
Sincerely,

George S. Dees

George S. Dees
Dees Amoco
4901 Allegheny River Blvd.
Verona, Pa. 15147

Enc.

cc: Congressman Gaydos
Senator John Heinz
Congressman Walgren
Dave Haddad, Dir. A.R.G.D.
Mrs. Mickey Binsted
Senator Richard Schweiker

jmh

# Amoco Oil Company
# Statement of Dealer Policy

## History and Basic Principles

Amoco Oil Company has marketed through independent dealers for over 40 years, maintaining a productive relationship that has mutually benefited both dealers and the Company. The primary thrust of Amoco's direct marketing philosophy has been a commitment to marketing through independent dealers. In addition, Amoco has manufactured and supplied quality products and has provided dealers with assistance in advertising and merchandising these products.

In the interest of defining the obligations of both parties, the Company has established the following qualifications for its dealers:

- A history of demonstrated financial responsibility. This Company encourages dealers to obtain financing from conventional loan sources. Assistance and guidance for securing loans will be provided, on request, from District and Regional personnel.
- A reputation for good character.
- Proper training in the business aspects of service station operation ranging from business management to mechanical application.

**Company Responsibility** – The Company accepts its responsibilities to:

- Supply quality products to dealers in a timely manner, and in reasonable quantities, within the limits of supply availability and governmental regulations.
- Provide technical counseling and training relative to product application.
- Maintain customer awareness of our products and services through various advertising campaigns and merchandising programs.
- At all times to respect the rights of dealers to operate their business as independent businessmen.

**Dealer Responsibility** – We believe that Amoco dealers, as businessmen, have an obligation: 1) to the motoring public, and 2) to Amoco. Amoco has developed a reputation for providing quality products and services. Motorists expect to find both available at stations bearing the Amoco trademark. Dealer's responsibilities include providing adequately trained manpower, proper hours of operation, and a clean and attractive station appearance that will enhance motorist acceptance. A disproportionate number of customer complaints relating to a dealer's operation or integrity will suggest he has not fulfilled the responsibilities described above.

**Products** – Amoco will not tolerate coercion, harassment, or any improper pressure brought upon dealers by Company personnel. We believe that all dealers should use their best efforts to promote the sale of Amoco gasolines to motorists. We believe that our motor oil and TBA products offer dealers exceptional opportunities for additional profit, and as business people, we expect our Territory Managers to call dealers' attention to the merits of these products, attempt to sell them, and provide merchandising assistance when necessary. However, dealers are completely free to buy their TBA and motor oil from whomever, and in whatever quantity they choose.

**Price** – As independent businessmen, dealers have the absolute right to set whatever price they choose on their products and are free to display and promote them in any legal manner. The Company continually develops a wide variety of advertising, sales promotion, and merchandising programs which will assist dealers in their sales efforts. The decision to participate in any of these programs is theirs. We will convey our suggestions and advice on all of these matters based on our experience, but dealers alone must decide their own course of action.

**Relationship** – a direct line of communication for dealers is available through contact with District personnel. Company representatives will be receptive to constructive suggestions made by dealers, which are in the best interest of Company/dealer relations. In addition, all Districts have an organized Dealer Advisory Council which traditionally has represented an open forum and opportunity for dealers and the Company to present views and recommendations to each other.

Amoco's commitment to recognizing the dealers' rights as independent businessmen has been stressed to employees at all levels of our Company. Should dealers at any time receive an indication that our Policy is not receiving strict adherence from all of our personnel, they have the right to bring this fact to the attention of the District Manager. If after a discussion with the District Manager, disposition of the dispute is not made to their satisfaction, they may contact the Chairman of the Regional Dealer Relations Committee. This Committee consists of a group of Regional management personnel that convenes for the purpose of resolving dealer-related problems where solutions cannot be reached at the District level. Dealers are assured that any letter written to the Committee Chairman will receive prompt attention.

Vice President, Marketing

TEL: 472-8788

A.C. LIMTIACO, INC.

**LIMTIACO AUTO CARE CENTER**

P.O. BOX 1205
AGANA, GUAM 96910

May 23, 1980

The Honorable Berkley Bedell
Chairman, Antitrust and Restraint of Trade
Congress of the United States
216 Cannon House Office Bldg.
Washington, D.C. 20515

Subject: Small Business Motor Fuel Marketer Preservation Act (HR 6722)

Dear Rep. Bedell:

I fully support your divorcement bill entitled "Small Business Motor Fuel Marketer Preservation Act", (HR 6722).

On Guam, there are sixteen (16) independent Mobil service station dealers who are futilely competing with six (6) Exxon Corporation directly operated service stations.

As an independent service station operator I have to pay what I believe is an excessive amount for rent. Compounding this problem I am also faced with a price disparity of over ten to fifteen per cent (10-15%). As a result, I have lost over forty per cent (40%) of my gasoline sales.

My situation is similar to that of most of my fellow dealers, and although, we are still hanging on to what is left of our small business we are gradually losing the battle with no relieve in sight.

Very truly yours

Antonio C. Limtiaco

Antonio C. Limtiaco
Mobil Dealer

SWARTHMORE, PA., *February 20, 1980.*

Congressman BERKLEY BEDELL,
*House Office Building,*
*Washington, D.C.*

DEAR CONGRESSMAN BEDELL: I am enclosing a Xerox copy of the article which appeared in the Philadelphia Inquirer on January 28. I was delighted to see that someone—you, in this instance—is concerned enough about the concentration of power attained by the petroleum cartel.

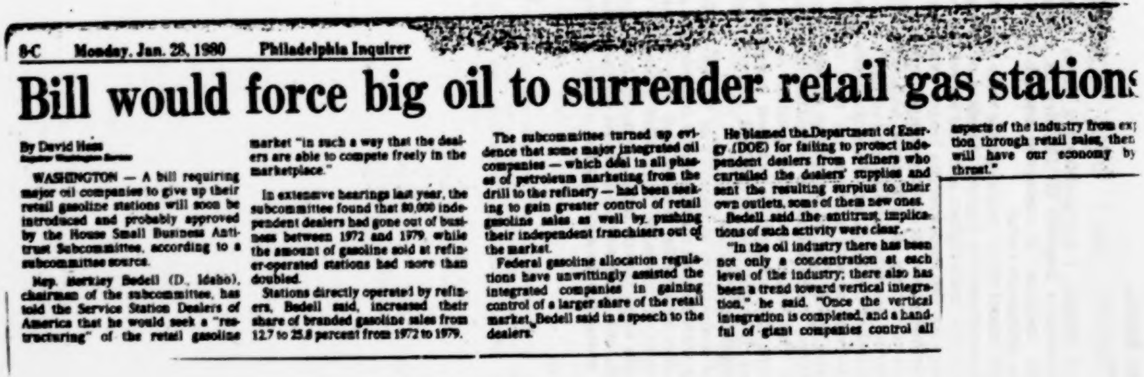
When I was in grade school many years ago we were taught that America has the best system of government and the highest standard of living in the world because we have competition in the marketplace and this serves the best interests of all our citizens. This advantage for the consumer no longer exists because we have allowed concentrations of economic power to destroy competition and replace it with selfish control of supplies in a variety of industries and services: petroleum, banking, automobile manufacturing, medical services, and others.

But the vertical control of the oil giants, from the wells right down to the gasoline pump in the neighborhood service station has been a thorn in the side of the consumer now for many years. The oil companies should be prevented from owning or leasing service stations which should be permitted freedom of choice of suppliers for gasoline they sell. This would restore competition as the refiners scrambled for outlets. It would assure also competition between independent service stations for the consumers' dollars. It might even bring back a check under the hood, cleaning the windshield, and checking the tires.

We had this kind of competition as recently as 20 years ago. I personally had the satisfaction of dealing with several qualified and trustworthy service station dealers who provided responsible service for women and busy businessmen with excellent mechanical care for their automobiles. They were a blessing in their communities. These men are virtually non-existent today; so many have been cast aside ruthlessly, their leases broken, and their service stations converted to self-service "gas and go" operations, with young people grabbing the money as you put gas in your own car . . .

Very truly yours,

W. NED MIKUSINSKI.



8-C Monday, Jan. 28, 1980 Philadelphia Inquirer

# Bill would force big oil to surrender retail gas station

By David Hess
Inquirer Washington Bureau

WASHINGTON — A bill requiring major oil companies to give up their retail gasoline stations will soon be introduced and probably approved by the House Small Business Antitrust Subcommittee, according to a subcommittee source.

Rep. Berkley Bedell (D., Idaho), chairman of the subcommittee, has told the Service Station Dealers of America that he would seek a "restructuring" of the retail gasoline market "in such a way that the dealers are able to compete freely in the marketplace."

In extensive hearings last year, the subcommittee found that 80,000 independent dealers had gone out of business between 1972 and 1979, while the amount of gasoline sold at refiner-operated stations had more than doubled.

Stations directly operated by refiners, Bedell said, increased their share of branded gasoline sales from 12.7 to 25.8 percent from 1972 to 1979.

The subcommittee turned up evidence that some major integrated oil companies — which deal in all phases of petroleum marketing from the drill to the refinery — had been seeking to gain greater control of retail gasoline sales as well by pushing their independent franchisers out of the market.

Federal gasoline allocation regulations have unwittingly assisted the integrated companies in gaining control of a larger share of the retail market, Bedell said in a speech to the dealers.

He blamed the Department of Energy (DOE) for failing to protect independent dealers from refiners who curtailed the dealers' supplies and sent the resulting surplus to their own outlets, some of them new ones.

Bedell said the antitrust implications of such activity were clear.

"In the oil industry there has been not only a concentration at each level of the industry; there also has been a trend toward vertical integration," he said. "Once the vertical integration is completed, and a handful of giant companies control all aspects of the industry from ex
tion through retail sales, the
will have our economy b
throat."

June 9, 1980

Rep. Berkley Bedell
B-363 Rayburn Building
Washington, D.C. 20515

Representative Bedell:

RE: House Small Business Antitrust Subcommittee

You are currently holding hearings regarding a bill to prohibit oil refiners from operating retail outlets. I strongly support such a measure and am convinced that such action would be one of the most significant moves toward addressing the energy issues, and creating a more competitive free-enterprise system. A competitive fuel system offers significantly more consumer protection than the present non-competitive monolithic system.

I have attached some thoughts on energy policy and an outline of an energy program of which disinvestiture by the oil companies of their retail outlets is an important element.

I hope that the legislation under consideration will receive prompt and positive action. I would like to receive a copy of the bill and any information you can supply.

Sincerely,

Paul R. Rotter

Paul R. Rotter
190 Belgrave Avenue
San Francisco, CA. 94117

Enclosures

## Regarding U.S. Energy Policies

It is becoming increasingly apparent that the U.S. is finding itself in a poor strategic position regarding oil supplies. Our ability to protect our own national interests and the interests of our allies and members of the 'third world' is seriously threatened, and our ability to form a coherent foreign policy is comprimised by our need to ensure a supply of oil for ourselves and our allies.

The tremenduous flow of dollars out of our economy, the continuing deficit of balance of payments, the consequent weakness of the dollar, and our strategic dependence on the policies of foreign nations are creating an unstable political climate and a dangerous economic situation in the U.S. The very large deposits of oil-dollars by OPEC nations in U.S. banks are a potential threat to the banks themselves and to the country generally in that a sudden mass withdrawal or even threat to do so could have disasterous results.

Concurrently, the oil industry, with its multi-national structure, is increasingly operating in a non-competitive (cartel like) fashion, and exerts undue political and economic pressures on national policy and is largely a captive operative of the OPEC nations.

There is great controversy regarding the question of domestic and international oil reserves for the short and long run, and there is rampant suspicion that oil shortages and the sudden rises in oil prices are supported by the international oil corporations. There is little dispute that dependence on foreign supplies for a monolithic fuel system is a strategic danger to our national interests.

Creation of a competitive oil industry in the U.S. and the creation of a more diverse energy program, especially fuel for transportation, is of paramount national concern. A program of deregulation, disinvestiture, and rationing will create a more diverse, competitive system, strengthening our democratic free-enterprise institutions. With oil companies operating at all levels of the fuel delivery system, they are able to manipulate the supply and price in such a fashion that independent dealers are being pushed out of the field, leaving only company owned outlets and a nation more captive to an increasingly uncompetitive market.

If oil companies are restricted from retail sales, then retail dealers could shop for competitive supplies, increase effeciency, and also offer alternative fuels without threat of closure or lack of supply from refineries. Without independent outlets the oil companies will have a stronger hold on the fuel distribution system in the U.S. and will make it difficult to impossible to introduce new fuel types on a national or regional scale. Further, and equally important, it will become nearly impossible for independent manufacturers and suppliers of alternative fuels to enter the field. The existing system will continue our dependence on foreign oil and dangerously intensify all the related problems.

The magnitude of resources, capital and income that the oil industry now enjoy has given the industry substantial political and economic clout. The size of this political clout makes it difficult for administrations and legislative bodies to comfortably address the energy issues.

Alternative fuels are not an immediate panacea and it will take some years to get a more diverse energy system. However, we can and must take prudent steps to protect ourselves in the short run and take bold measures which will create a more diverse, responsible, efficient and competitive fuel industry as part of a stronger domestic economy that is more resilient in crisis periods.

Paul R. Rotter  190 Belgrave Ave.  San Francisco, Calif. 94117

Goals: to reduce U.S. dependence on foreign oil imports.
to reduce & control the political & economic impact of the oil industry.
to ensure a strategic supply of fuels in a national emergency.
to ensure a fuel supply for domestic business/pleasure consumption.
to stimulate fuel technology and diversity.
to promote a competitive domestic economy more resilient in crisis periods.

## A Vehicle Fuel Development/Conservation/Allocation Program (A)

1. Deregulation: domestic oil to be deregulated at the wellhead (old and new wells). No price controls. (B)

2. Disinvestiture: the oil industry in the U.S. to be restructured into a two tier system:
   Tier 1 - exploration & refining.
   Tier 2 - distribution & retailing.
   Tier 1 companies to be required, within a 2 year period, to divest themselves, fully, of all Tier 2 activities/facilities, and to be prohibited from having any interests (stocks, exclusive supply contracts, board members, etc.) in any Tier 2 company, and to be prohibited from any restrictive practices with regard to Tier 2 companies.
   Tier 1 oil companies to be prohibited from Tier 2 activities relative to alternative fuels. Tier 2 companies free from any such restriction, may distribute and retail alternative fuels as well as petroleum fuels.

3. Rationing: petroleum based fuels (gasoline, gasohol, etc.)(C) to be rationed through a federal program designed to operate on a phased reduction of rationed allowances:
   Phase 1 - max. individual supply ±25 gal/week, 4 month period;
   Phase 2 - ±20 gal/week, 4 months;
   Phase 3 - ±15 gal/week, 4 months;
   Phase 4 - ±10 gal/week, 5 year period. (D)

4. Alternative fuels: all non-petroleum based fuels (alcohols, hydrogen, etc.) shall be unrationed. Vehicles using alternative fuels shall demonstrate minimum safety standards and meet some minimal standard for emissions. (E)

5. Federal (and state) income tax credits (or deductions) allowed for personal or corporate conversions (or purchase) of vehicle engines from gasoline to alternative fuel. Allowances up to ±$1,000. per vehicle. (F)

6. Federal (and state) programs, through tax incentives, etc., to promote research and development and use of alternative fuels, and establishment of simple national standards for alternative fuels.

(A)- This program would deal with road-vehicle fuel and related oil products. Airline fuels not included in this program. Fuel supply to farm vihicles (and trucking industry) may have to be protected. Control of pleasure/sport vehicles and boats, etc., should also be rationed.
(B)- Some form of excess profits tax could be employed.
(C)- Inclusion/exclusion of high-alcohol content gasohol would have to be worked out.
(D)- Rationing portion of program to have a sunset provision requiring review by Congress. Ration amount per week to be verified, based on current consumption.
(E)- Standards for safety during handling/transport and fuel tank/engine design to be fairly rigid. Standards for emissions to be a reasonable minimum so as not to be restrictive. Labeling standards (octane, type, etc.) for consumer information and protection to be worked out.
(F)- Allowance amount, and limit on number of allowances per individual, to be more precisely established. State and/or federal program of verification/inspection or conversions.

Paul R. Rotter 190 Belgrave Ave. San Francisco, Calif. 94117

## Appendix O.—Supreme Court Decision, *Exxon Corp.* v. *Governor of Maryland*

### Exhibit 1: The Library of Congress, Congressional Research Service, critique of Supreme Court Decision in *Exxon Corp.* v. *Governor of Maryland*

The Library of Congress
Congressional Research Service
Washington, D.C. 20540

### SUPREME COURT DECISION IN EXXON CORP. v. GOVERNOR OF MARYLAND, 437 U.S. 117 (1978)

The statute challenged in Exxon Corp. v. Governor of Maryland, Section 157E of Article 56, Md. Ann. Code (1976 Cum Supp.), and upheld in a 7-1 opinion (Mr. Justice Powell did not take part in the consideration of the case) as constitutional and not in conflict with Federal statutory enactments by the Supreme Court, inter alia, prohibits producers or refiners of petroleum products from operating retail service stations as "company" outlets; and requires that suppliers who grant "voluntary allowances" (usually price reductions) to any dealer-customer do so uniformly to all dealer-customers. Inasmuch as no petroleum is produced in Maryland, and no petroleum refineries are located in Maryland, the effect of the statute is to prohibit the operation of retail service stations by other than local, Maryland dealers. Accordingly, the legislation was challenged as violative of both the Due Process and Commerce Clauses of the Constitution. In addition, the "voluntary allowance" provision was challenged as invalid because it conflicts with the provision in the Robinson-Patman (price discrimination) Act (15 U.S.C. sec. 13) which allows a seller to lower prices to a customer in order to meet competition.

### Due Process Argument

The Court briefly disposed of the Due Process challenge by noting that economic regulation by the States need only meet a rational connection standard in order to be upheld as valid and not violative of due process: "Regardless of the ultimate economic efficacy of the statute, we have no hesitancy in concluding that it bears a reasonable relation to the State's legitimate purpose in controlling the gasoline retail market, and we therefore reject appellant's due process claim." (437 U.S. at 124, 125) In other words, the Court refused to "second guess" the Maryland legislature, which had chosen to combat what it perceived as an untenable situation (alleged perferential treatment by the integrated oil companies in supplying gasoline to their own outlets) by means of a solution which could conceivably mitigate the problem. With Exxon, the Court followed its rather consistent assertion that economic regulation undertaken by legislative bodies is, while not immune to constitutional challenges, unlikely to be judicially disapproved merely because the regulation affects different groups or classes differently: "... the judiciary may not sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights not proceed along suspect lines." (New Orleans v. Dukes, 427 U.S. 297, 303 (1976); see also, McGowan v. Maryland, 366 U.S. 420 (1961), Railway Express Agency v. New York City, 336 U.S. 106 (1949))

### Interstate Commerce Arguments

The challenge to the statute's allegedly impermissible effect on interstate commerce was similarly disposed of by the Court, albeit with a bit more explanatory material. First, according to the opinion, the fact that all of the gasoline sold in Maryland necessarily flows in interstate commerce and must be imported into the State defeats the argument that the statute discriminates against interstate commerce. Even at the retail level, the Court noted, "the Act creates no barriers whatsoever against interstate independent dealers; it does not prohibit the flow of interstate goods, place added costs upon them, or distinguish between in-state and out-of-state companies in the retail market. The absence of any of these factors fully distinguishes this case from those in which the State has been found to have discriminated against interstate commerce." (437 U.S. at 126)

Second, the Court rejected the argument that the Maryland statute, even if it does not discriminate against interstate commerce, impermissibly burdens that commerce. Exxon argued that inasmuch as the companies that will be forced to divest themselves of retail service stations are interstate companies, the statute interferes with the movement of goods in interstate commerce. But, although "[s]ome refiners may choose to withdraw entirely from the Maryland market, ... there is no reason to assume that their share of the entire supply will not be promptly replaced by other interstate refiners. The source of the consumers' supply may switch from company-operated stations to independent dealers, but interstate commerce is not subjected to an impermissible burden simply because an otherwise valid regulation causes some business to shift from one interstate supplier to another." (437 U.S. at 127) And in answer to Exxon's assertion that consumers will ultimately bear the burden of the higher cost of independent dealer-operated replacements for company-operated stations, the Court stated that "It may be true that the consuming public will be injured by the loss of the high volume, low-priced stations operated by the independent refiners, but again that argument relates to the wisdom of the statute, not to its burden on commerce." (*Ibid.*)

Third, the Court rejected appellant's final Commerce Clause argument, that because "the economic market for petroleum products is nationwide, no State has the power to regulate the retail marketing of gas." (437 U.S. at 128) Although the existence or potential existence of a variety of State statutes that regulate the retail sale of gasoline is of "concern" to the Court, it apparently perceives no need for national uniformity in the regulation of the retail gasoline market. Moreover, the Court notes, "The evil that appellants perceive in this case is not that the several States will enact differing regulations, but rather that they will all conclude that divestiture provisions are warranted." (*Ibid.*) The Court's disposition of appellant's Commerce Clause challenge is thus summarized: "In the absence of a relevant congressional declaration of policy [concerning petroleum product marketing,] or a showing of a specific discrimination against, or burdening of, interstate commerce, we cannot conclude that the States are without power to regulate in this area." (437 U.S. at 128, 129)

## Conflict With Federal Antitrust Laws Arguments

As for the argument that the Maryland statute conflicts with the competitive policy set forth in the Federal antitrust laws, specifically the Sherman Act (15 U.S.C secs. 1-7) and the Robinson-Patman Act, the Court agreed that, while there is a conflict between the state statute and the Federal laws, "this sort of conflict cannot itself constitute a sufficient reason for invalidating the Maryland statute. For if an adverse effect on competition were, in and of itself, enough to render a state statute invalid, the States' power to engage in economic regulation would be effectively destroyed." (437 U.S. at 133) Section 2(b) of the Robinson-Patman Act (15 U.S.C. sec. 13(b)) permits a seller accused of unlawfully discriminating in price between customers to defend his selective prices by asserting that the lower prices were extended in order to meet competition ("... that his lower price ... was made in good faith to meet an equally low price of a competitor...."). Exxon argued, unpersuasively, that if it obeyed the requirements of the Maryland statute, it would violate the "meeting competition" provision of Robinson-Patman. The Court responded that Exxon incorrectly characterized section 2(b) as establishing a federal right to engage in localized price discrimination, emphasizing that the provision merely allows a defense to price discrimination in certain, limited situations. Further, although Congress exempted certain discriminatory conduct from the overall Robinson-Patman prohibition against price discrimination, "it is illogical to infer that by excluding certain competitive behavior from the general ban against discriminatory pricing, Congress intended to pre-empt the States' power to prohibit any conduct within that exclusion." (437 U.S. at 132)

Dissent

Mr. Justice Blackmun, dissenting from the Court's Commerce Clause reasoning and conclusions, stated that he considered the Maryland statute, which he termed "protectionist" with respect to its (effectively) favoring of intrastate dealers over interstate dealers, "not justified by any legitimate state interest that cannot be vindicated by more evenhanded regulation." (437 U.S. at 135) While the facially neutral statute applies equally to all refiners and producers, the dissenting Justice would have looked to the effect (discrimination against out-of-state actors in interstate commerce) in order to determine that the discrimination -- intended or not -- was "unconstitutional."

Janice E. Rubin

Janice E. Rubin
Legislative Attorney
American Law Division
October 11, 1979

EXHIBIT 2: TEXT OF SUPREME COURT DECISION, IN *EXXON CORP.* V. *GOVERNOR OF MARYLAND*

# EXXON CORP. ET AL. *v.* GOVERNOR OF MARYLAND ET AL.

## APPEAL FROM THE COURT OF APPEALS OF MARYLAND

No. 77-10. Argued February 28, 1978—Decided June 14, 1978*

Responding to evidence that during the 1973 petroleum shortage oil producers or refiners were favoring company-operated gasoline stations, Maryland enacted a statute prohibiting producers or refiners from operating retail service stations within the State, and requiring them to extend all "voluntary allowances" (temporary price reductions granted to independent dealers injured by local competitive price reductions) uniformly to all stations they supply. In actions by several oil companies challenging the validity of the statute on various grounds, the Maryland trial court held the statute invalid primarily on substantive due process grounds, but the Maryland Court of Appeals reversed, upholding the validity of the statute against contentions, *inter alia,* that it violated the Commerce and Due Process Clauses and conflicted with § 2 (b) of the Clayton Act, as amended by the Robinson-Patman Act, which prohibits price discrimination, with the proviso that a seller can defend a price discrimination charge by showing that he charged a lower price in good faith to meet a competitor's equally low price. *Held:*

1. The Maryland statute does not violate the Due Process Clause, since, regardless of the ultimate efficacy of the statute, it bears a reasonable relation to the State's legitimate purpose in controlling the gasoline retail market. Pp. 124–125.

2. The divestiture provisions of the statute do not violate the Commerce Clause. Pp. 125–129.

(a) That the burden of such provisions falls solely on interstate companies does not, by itself, establish a claim of discrimination against interstate commerce. The statute creates no barrier against interstate independent dealers, nor does it prohibit the flow of interstate goods, place added costs upon them, or distinguish between in-state and out-of-state companies in the retail market. *Hunt* v. *Washington Apple*

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*Together with No. 77-11, *Shell Oil Co.* v. *Governor of Maryland et al.*; No. 77-12, *Continental Oil Co. et al.* v. *Governor of Maryland et al.*; No. 77-47, *Gulf Oil Corp.* v. *Governor of Maryland et al.*; and No. 77-64, *Ashland Oil, Inc., et al.* v. *Governor of Maryland et al.*, also on appeal from the same court.

*Advertising Comm'n*, 432 U. S. 333; *Dean Milk Co.* v. *Madison*, 340 U. S. 349, distinguished. Pp. 125–126.

(b) Nor does the fact that the burden of state regulation falls on interstate companies show that the statute impermissibly *burdens* interstate commerce, even if some refiners were to stop selling in the State because of the divestiture requirement and even if the elimination of company-operated stations were to deprive consumers of certain special services. Interstate commerce is not subjected to an impermissible burden simply because an otherwise valid regulation causes some business to shift from one interstate supplier to another. The Commerce Clause protects the interstate market, not particular interstate firms, from prohibitive or burdensome regulations. Pp. 127–128.

(c) The Commerce Clause does not, by its own force, pre-empt the field of retail gasoline marketing, but, absent a relevant congressional declaration of policy, or a showing of a specific discrimination against, or burdening of, interstate commerce, the States have the power to regulate in this area. Pp. 128–129.

3. The "voluntary allowances" requirement of the Maryland statute is not pre-empted by § 2 (b) of the Clayton Act, as amended by the Robinson-Patman Act, or the Sherman Act. Pp. 129–134.

(a) Any hypothetical "conflict" arising from the possibility that the Maryland statute may require uniformity in some situations in which the Robinson-Patman Act would *permit* localized price discrimination is not sufficient to warrant pre-emption. Pp. 130–131.

(b) Neither § 2 (b) nor the federal policy favoring competition establishes a federal right to engage in discriminatory pricing in certain situations. Section 2 (b)'s proviso is merely an exception to that statute's broad prohibition against discriminatory pricing and does not create any new federal right, but rather defines a specific, limited defense. Pp. 131–133.

(c) While in the sense that the Maryland statute might have an anticompetitive effect there is a conflict between that statute and the Sherman Act's central policy of "economic liberty," nevertheless this sort of conflict cannot by itself constitute a sufficient reason for invalidating the Maryland statute, for if an adverse effect on competition were, in and of itself, enough to invalidate a state statute, the States' power to engage in economic regulation would be effectively destroyed. Pp. 133–134.

279 Md. 410, 370 A. 2d 1102, and 372 A. 2d 237, affirmed.

STEVENS, J., delivered the opinion of the Court, in which BURGER, C. J., and BRENNAN, STEWART, WHITE, MARSHALL, and REHNQUIST, JJ., joined. BLACKMUN, J., filed an opinion concurring in part and dissenting in part, *post,* p. 134. POWELL, J., took no part in the consideration or decision of the cases.

*William Simon* argued the cause for appellants in all cases. With him on the briefs for appellants in Nos. 77–10, 77–11, and 77–47 were *William L. Marbury, Lewis A. Noonberg, David F. Tufaro, Robert L. Stern, J. Edward Davis, Daniel T. Doherty, Jr., Robert G. Abrams, Lawrence S. Greenwald, Bernard J. Caillouet, Richard P. Delaney, Lauric J. Cusack, Jerry Miller,* and *A. M. Minotti. Wilbur D. Preston, Jr., Stanley B. Rohd, Andrew K. McColpin,* and *Richard R. Linn* filed a brief for appellants in No. 77–12. *David Ginsburg, Fred W. Drogula,* and *James E. Wesner* filed briefs for appellants in No. 77–64.

*Francis B. Burch,* Attorney General of Maryland, and *Thomas M. Wilson III,* Assistant Attorney General, argued the cause for respondents in all cases. With them on the brief were *John F. Oster,* Deputy Attorney General, and *John A. Woodstock* and *Steven P. Resnick,* Assistant Attorneys General.†

MR. JUSTICE STEVENS delivered the opinion of the Court.

A Maryland statute provides that a producer or refiner of petroleum products (1) may not operate any retail service station within the State, and (2) must extend all "voluntary validity of the statute on both constitutional and federal statutory grounds.[5]

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†Briefs of *amici curiae* urging reversal were filed by *Eugene Gressman* for the Charter Oil Co. et al.; and by *John S. McDaniel, Jr.,* and *William J. Rubin* for the Crown Petroleum Corp.

*Jerry S. Cohen* filed a brief for the National Congress of Petroleum Retailers as *amicus curiae* urging affirmance.

Briefs of *amici curiae* were filed by *Evelle J. Younger,* Attorney General, *Sanford N. Gruskin,* Chief Assistant Attorney General, *Warren J. Abbott,* Assistant Attorney General, and *Michael I. Spiegel* and *Linda L. Tedeschi,* Deputy Attorneys General, for the State of California; by *Erwin N. Griswold* for Champlin Petroleum Co. et al.; and by *George W. Liebmann, Robert B. Levin,* and *Robert G. Levy* for Day Enterprises, Inc., et al.

During the ensuing nine months, six other oil companies instituted comparable actions. Three of these plaintiffs, or their subsidiaries, sell their gasoline in Maryland exclusively through company-operated stations.[6] These refiners, using trade names such as "Red Head" and "Scot," concentrate largely on high-volume sales with prices consistently lower than those offered by independent dealer-operated major brand stations. Testimony presented by these refiners indicated that company ownership is essential to their method of private brand, low-priced competition. They therefore joined Exxon in its attack on the divestiture provisions of the Maryland statute.

The three other plaintiffs, like Exxon, sell major brands primarily through dealer-operated stations, although they also operate at least one retail station each.[7] They, too, challenged the statute's divestiture provisions, but, in addition, they specially challenged the requirement that "voluntary allowances" be extended uniformly to all retail service stations supplied in the State. Although not defined in the statute, the term "voluntary allowances" refers to temporary price reductions granted by the oil companies to independent dealers who are injured by local competitive price reductions of competing retailers.[8] The oil companies regard these temporary allowances as legitimate price reductions protected by § 2 (b). In advance of trial, Exxon, Shell, and Gulf moved for a partial summary judgment declaring this portion of the Act invalid as in conflict with § 2 (b).

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[5] Exxon presented nine arguments, both constitutional and statutory. It contended that the statute was arbitrary and irrational under the Due Process Clause; constituted an unconstitutional taking of property without just compensation; denied it, in two distinct ways, the equal protection of the laws; constituted an unlawful delegation of legislative authority; was unconstitutionally vague; discriminated against and burdened interstate commerce; and was pre-empted by the Robinson-Patman Act and the Federal Emergency Petroleum Allocation Act of 1973. *Id.*, at 14-16.

[6] These plaintiffs are Continental Oil Co. (and its subsidiary Kayo Oil Co.), Commonwealth Oil Refining Co. (and its subsidiary Petroleum Marketing Corp.), and Ashland Oil Co.

[7] These plaintiffs are Phillips Petroleum Co., Shell Oil Co., and Gulf Oil Corp.

The Circuit Court granted the motion, and the trial then focused on the validity of the divestiture provisions. As brought out during the trial, the salient characteristics of the Maryland retail gasoline market are as follows: Approximately 3,800 retail service stations in Maryland sell over 20 different brands of gasoline. However, no petroleum products are produced or refined in Maryland, and the number of stations actually operated by a refiner or an affiliate is relatively small, representing about 5% of the total number of Maryland retailers.

The refiners introduced evidence indicating that their ownership of retail service stations has produced significant benefits for the consuming public.[9] Moreover, the three refiners that now market solely through company-operated stations may elect to withdraw from the Maryland market altogether if the statute is enforced. There was, however, no evidence that the total quantity of petroleum products shipped into Maryland would be affected by the statute.[10] After trial, the Circuit Court held the entire statute invalid, primarily on substantive due process grounds.

The Maryland Court of Appeals reversed, rejecting all of the refiners' attacks against both the divestiture provisions and the voluntary-allowance provision. Most of those attacks are not pursued here;[11] instead, appellants have focused their appeals on the claims that the Maryland statute violates the Due Process and Commerce Clauses and that it is in conflict with the Robinson-Patman Act.

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[8] See 279 Md., at 445–446, 370 A. 2d, at 1121–1122.

[9] *Id.*, at 418–420, 370 A. 2d, at 1107–1108.

[10] The Court of Appeals stated that the statute "would not in any way restrict the free flow of petroleum products into or out of the state." *Id.*, at 431, 370 A. 2d, at 1114. While the evidence in the record does not directly support this assertion, it is certainly a permissible inference to be drawn from the evidence, or lack thereof, presented by the appellants. See Reply Brief for Appellants in No. 77–64, p. 7.

## II

Appellants' substantive due process argument requires little discussion.[12] The evidence presented by the refiners may cast some doubt on the wisdom of the statute, but it is, by now, absolutely clear that the Due Process Clause does not empower the judiciary "to sit as a 'superlegislature to weigh the wisdom of legislation' . . . ." *Ferguson* v. *Skrupa*, 372 U. S. 726, 731 (citation omitted). Responding to evidence that producers and refiners were favoring company-operated stations in the allocation of gasoline and that this would eventually decrease the competitiveness of the retail market, the State enacted a law prohibiting producers and refiners from operating their own stations. Appellants argue that this response is irrational and that it will frustrate rather than further the State's desired goal of enhancing competition. But, as the Court of Appeals observed, this argument rests simply on an evaluation of the economic wisdom of the statute, 279 Md., at 428, 370 A. 2d, at 1112, and cannot override the State's authority "to legislate against what are found to be injurious practices in their internal commercial and business affairs . . . ." *Lincoln Federal Labor Union* v. *Northwestern Iron & Metal Co.*, 335 U. S. 525, 536.[13] Regardless of the ultimate economic efficacy of the statute, we have no hesitancy in concluding that it bears a reasonable relation to the State's legitimate purpose in controlling the gasoline retail market, and we therefore reject appellants' due process claim.

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[11] See n. 5, *supra*.

[12] Indeed, although the Circuit Court's decision rested primarily on the substantive due process claim, only appellants Continental Oil and its subsidiary, Kayo Oil, press that claim here.

[13] It is worth noting that divestiture is by no means a novel method of economic regulation, and is found in both federal and state statutes. To date, the courts have had little difficulty sustaining such statutes against a substantive due process attack. See, *e. g., Paramount Pictures,*

## III

Appellants argue that the divestiture provisions of the Maryland statute violate the Commerce Clause in three ways: (1) by discriminating against interstate commerce; (2) by unduly burdening interstate commerce; and (3) by imposing controls on a commercial activity of such an essentially interstate character that it is not amenable to state regulation.

Plainly, the Maryland statute does not discriminate against interstate goods, nor does it favor local producers and refiners. Since Maryland's entire gasoline supply flows in interstate commerce and since there are no local producers or refiners, such claims of disparate treatment between interstate and local commerce would be meritless. Appellants, however, focus on the retail market, arguing that the effect of the statute is to protect in-state independent dealers from out-of-state competition. They contend that the divestiture provisions "create a protected enclave for Maryland independent dealers . . . ."[14] As support for this proposition, they rely on the fact that the burden of the divestiture requirements falls solely on interstate companies. But this fact does not lead, either logically or as a practical matter, to a conclusion that the State is discriminating against interstate commerce at the retail level.

As the record shows, there are several major interstate marketers of petroleum that own and operate their own retail

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*Inc.* v. *Langer*, 23 F. Supp. 890 (N. D. 1938), dismissed as moot, 306 U. S. 619; see generally Comment, Gasoline Marketing Practices and "Meeting Competition" under the Robinson-Patman Act, 37 Md. L. Rev. 323, 329 n. 44 (1977).

[14] Brief for Appellants in No. 77-10, p. 27.

gasoline stations.[15] These interstate dealers, who compete directly with the Maryland independent dealers, are not affected by the Act because they do not refine or produce gasoline. In fact, the Act creates no barriers whatsoever against interstate independent dealers; it does not prohibit the flow of interstate goods, place added costs upon them, or distinguish between in-state and out-of-state companies in the retail market. The absence of any of these factors fully distinguishes this case from those in which a State has been found to have discriminated against interstate commerce. See, *e. g., Hunt* v. *Washington Apple Advertising Comm'n*, 432 U. S. 333; *Dean Milk Co.* v. *Madison*, 340 U. S. 349. For instance, the Court in *Hunt* noted that the challenged state statute raised the cost of doing business for out-of-state dealers, and, in various other ways, favored the in-state dealer in the local market. 432 U. S., at 351-352. No comparable claim can be made here. While the refiners will no longer enjoy their same status in the Maryland market, in-state independent dealers will have no competitive advantage over out-of-state dealers. The fact that the burden of a state regulation falls on some interstate companies does not, by itself, establish a claim of discrimination against interstate commerce.[16]

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[15] For instance, as of July 1, 1974, such interstate, nonrefining or producing, companies as Sears Roebuck, Hudson Oil Co., and Pantry Pride operated retail gas stations in Maryland. App. 190-191. Hudson has, however, recently acquired a refinery. See Brief for Appellants in No. 77-10, p. 33 n. 17.

[16] If the effect of a state regulation is to cause local goods to constitute a larger share, and goods with an out-of-state source to constitute a smaller share, of the total sales in the market—as in *Hunt*, 432 U. S., at 347, and *Dean Milk*, 340 U. S., at 354—the regulation may have a discriminatory effect on interstate commerce. But the Maryland statute has no impact on the relative proportions of local and out-of-state goods sold in Maryland and, indeed, no demonstrable effect whatsoever on the interstate flow of goods. The sales by independent retailers are just as much a part of

Appellants argue, however, that this fact does show that the Maryland statute impermissibly *burdens* interstate commerce. They point to evidence in the record which indicates that, because of the divestiture requirements, at least three refiners will stop selling in Maryland, and which also supports their claim that the elimination of company-operated stations will deprive the consumer of certain special services. Even if we assume the truth of both assertions, neither warrants a finding that the statute impermissibly burdens interstate commerce.

Some refiners may choose to withdraw entirely from the Maryland market, but there is no reason to assume that their share of the entire supply will not be promptly replaced by other interstate refiners. The source of the consumers' supply may switch from company-operated stations to independent dealers, but interstate commerce is not subjected to an impermissible burden simply because an otherwise valid regulation causes some business to shift from one interstate supplier to another.

The crux of appellants' claim is that, regardless of whether the State has interfered with the movement of goods in interstate commerce, it has interfered "with the natural functioning of the interstate market either through prohibition or through burdensome regulation." *Hughes* v. *Alexandria Scrap Corp.*, 426 U. S. 794, 806. Appellants then claim that the statute "will surely change the market structure by weakening the independent refiners . . . ."[17] We cannot, however, accept appellants' underlying notion that the Commerce Clause protects the particular structure or methods of operation in a retail market. See *Breard* v. *Alexandria*, 341 U. S. 622. As indicated by the Court in *Hughes*, the Clause protects the interstate market, not particular interstate firms, from prohib-

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the flow of interstate commerce as the sales made by the refiner-operated stations.

[17] Reply Brief for Appellants in No. 77-64, p. 7.

Court of Appeals concluded that the defense would also be unavailable. The court therefore reasoned that there was no conflict between the Maryland statute and § 2 (b), since the statute did not apply to any allowance protected by federal law. In our opinion, it is not necessary to decide whether the § 2 (b) defense would apply in the second situation, for even assuming that it does, there is no conflict between the Maryland statute and the Robinson-Patman Act sufficient to require pre-emption.

Appellants' first argument is that compliance with the Maryland statute may cause them to violate the Robinson-Patman Act. They stress the possibility that the requirement that a price reduction be made on a statewide basis may result in discrimination between customers who would otherwise receive the same price, and they describe various hypothetical situations to illustrate this point.[21] But, "[i]n this as in other areas of coincident federal and state regulation, the 'teaching of this Court's decisions . . . enjoin[s] seeking out conflicts between state and federal regulation where none clearly exists.' *Huron Cement Co.* v. *Detroit*, 362 U. S. 440, 446." *Seagram & Sons, Inc.* v. *Hostetter*, 384 U. S. 35, 45. See also *State* v. *Texaco, Inc.*, 14 Wis. 2d 625, 111 N. W. 2d 918 (1961). The Court in *Seagram & Sons* went on to say that "[a]lthough it is possible to envision circumstances under which price discriminations proscribed by the Robinson-Patman Act might be compelled by [the state statute], the existence of such potential conflicts is entirely too speculative in the present posture of this case" to warrant pre-emption. 384 U. S., at 46. That counsel of restraint applies with even greater force here. For even if we were to delve into the hypothetical situations posed by appellants, we would not be presented with a state statute that requires a violation of the Robinson-Patman Act. Instead, the alleged "conflict" here is in the possibility that the Maryland statute may require uniformity in some situations in which the Robinson-Patman Act would *permit* localized discrimination.[22] This sort of hypothetical conflict is not sufficient to warrant pre-emption.

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[21] Appellants argue that compliance with the "voluntary allowance" provision may expose them to both primary-line and secondary-line liability under § 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act. With respect to primary-line liability, they pose the hypothesis of a seller who responds to a competitor's lower price in Baltimore. Under the statute, he must lower his prices throughout the State, even though the competitive market justifying that price is confined to Baltimore. Appellants then argue that a competitor operating only in Salisbury, Md., may be injured by this price reduction. But an injury flowing from a uniform price reduction is not actionable under the Robinson-Patman Act, which only prohibits price discrimination. See F. Rowe, Price Discrimination Under the Robinson-Patman Act 93 (1962).

Appellants, however, also claim that the Robinson-Patman Act does not simply permit localized discrimination, but actually establishes a federal right to engage in discriminatory pricing in certain situations. They argue that this federal right may be found directly in § 2 (b), or, more generally, in our Nation's basic policy favoring competition as reflected in the Sherman Act as well as § 2 (b). We find neither argument persuasive.

The proviso in § 2 (b) of the Clayton Act, as amended by be construed as a congressional decision to pre-empt the power of the Maryland Legislature to enact this law.

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[22] Thus, appellants' claim that the statute will create secondary-line liability is premised on the possibility that price differentials may arise between stations located in Maryland and those in neighboring States. With respect to this claim, it is sufficient to note that, although the Maryland statute may affect the business decision of whether or not to reduce prices, it does not create any irreconcilable conflict with the Robinson-Patman Act. The statute may require that a voluntary allowance that could legally have been confined to the Baltimore area be extended to Salisbury. We may then assume, *arguendo*, that the Robinson-Patman Act could require a further extension of the allowance into the neighboring State. The possible scope of the voluntary allowance may, therefore, have an impact on the company's decision on whether or not to meet the competition in Baltimore, but the state statute does not in any way require discriminatory prices. See also n. 20, *supra*.

The judgment is affirmed.

*So ordered.*

MR. JUSTICE POWELL took no part in the consideration or decision of these cases.

MR. JUSTICE BLACKMUN, concurring in part and dissenting in part.

Although I agree that the Maryland Motor Fuel Inspection Law[1] does not offend substantive due process or federal anti-

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[1] The presently challenged portions of the law were enacted four years ago and amended once since then. 1974 Md. Laws, ch. 854; 1975 Md. Laws, ch. 608. The statute is now codified as Md. Code Ann., Art. 56, § 157E (Supp. 1977), and reads:

"(a) For the purpose of this law all gasoline and special fuels sold or offered or exposed for sale shall be subject to inspection and analysis as hereinafter provided. . . .

"(b) After July 1, 1974, no producer or refiner of petroleum products shall open a major brand, secondary brand or unbranded retail service station in the State of Maryland, and operate it with company personnel, a subsidiary company, commissioned agent, or under a contract with any person, firm, or corporation, managing a service station on a fee arrangement with the producer or refiner. The station must be operated by a retail service station dealer.

"(c) After July 1, 1975, no producer or refiner of petroleum products shall operate a major brand, secondary brand, or unbranded retail service station in the State of Maryland, with company personnel, a subsidiary company, commissioned agent, or under a contract with any person, firm, or corporation managing a service station on a fee arrangement with the producer or refiner. The station must be operated by a retail service station dealer.

"(d) Every producer, refiner, or wholesaler of petroleum products supplying gasoline and special fuels to retail service station dealers shall extend all voluntary allowances uniformly to all retail service station dealers supplied.

"(e) Every producer, refiner, or wholesaler of petroleum products supplying gasoline and special fuels to retail service station dealers shall trust policy, I dissent from Part III of the Court's opinion because it fails to condemn impermissible discrimination against interstate commerce in *retail* gasoline marketing. The divestiture provisions, Md. Code Ann., Art. 56, §§ 157E (b) and (c) (Supp. 1977) (hereinafter referred to as §§ (b) and (c)), preclude out-of-state competitors from retailing gasoline within Maryland. The effect is to protect in-state retail service station dealers from the competition of the out-of-state businesses. This protectionist discrimination is not justified by any legitimate state interest that cannot be vindicated by more evenhanded regulation. Sections (b) and (c), therefore, violate the Commerce Clause.[2]

## I

In Maryland the retail marketing of gasoline is interstate commerce, for all petroleum products come from outside the State. Retailers serve interstate travelers. To the extent that particular retailers succeed or fail in their businesses, the interstate wholesale market for petroleum products is affected. Cf. *Dean Milk Co.* v. *Madison,* 340 U. S. 349 (1951).[3] The

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apply all equipment rentals uniformly to all retail service station dealers supplied.

"(f) Every producer, refiner or wholesaler of petroleum products shall apportion uniformly all gasoline and special fuels to all retail service station dealers during periods of shortages on an equitable basis, and shall not discriminate among the dealers in their allotments."

[2] U. S. Const., Art. I, § 8, cl. 3:

"The Congress shall have Power . . .

"To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

[3] The inherent effect of local regulation of retail sales on interstate commerce is well illustrated by *Dean Milk.* The city of Madison forbade the sale of pasteurized milk unless pasteurization occurred at a plant located within five miles of the center of the city. General Ordinances of the City of Madison § 7.21 (1949). Even though only local sale was prohibited, the Court considered the ordinance to be a regulation of interstate commerce.

regulation of retail gasoline sales is therefore within the scope of the Commerce Clause. See *ibid.; Minnesota* v. *Barber,* 136 U. S. 313 (1890).[4]

### A

The Commerce Clause forbids discrimination against interstate commerce, which repeatedly has been held to mean that States and localities may not discriminate against the transactions of out-of-state actors in interstate markets. *E. g., Hunt* v. *Washington Apple Advertising Comm'n,* 432 U. S. 333, 350–352 (1977); *Halliburton Oil Well Co.* v. *Reily,* 373 U. S. 64, 69–73 (1963); *Dean Milk Co.* v. *Madison,* 340 U. S., at 354; *Best & Co.* v. *Maxwell,* 311 U. S. 454, 455–456 (1940). The discrimination need not appear on the face of the state or local regulation. "The commerce clause forbids discrimination, whether forthright or ingenious. In each case it is our duty to determine whether the statute under attack, whatever its name may be, will in its practical operation work discrimination against interstate commerce." *Ibid.* (footnote omitted). The state or local authority need not intend to discriminate in order to offend the policy of maintaining a free-flowing national economy. As demonstrated in *Hunt,* a statute that on its face restricts both intrastate and interstate transactions may violate the Clause by having the "practical effect" of discriminating in its operation. 432 U. S., at 350–352.

If discrimination results from a statute, the burden falls upon the state or local government to demonstrate legitimate local benefits justifying the inequality and to show that less discriminatory alternatives cannot protect the local interests.

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[4] Cf. *Best & Co.* v. *Maxwell,* 311 U. S. 454 (1940) (holding that taxation of local retailing was within the reach of the Commerce Clause); *United States* v. *Frankfort Distilleries, Inc.,* 324 U. S. 293 (1945) (holding that retailing was interstate commerce within the scope of the Sherman Act). See generally Note, Gasoline Marketing Divestiture Statutes: A Preliminary Constitutional and Economic Assessment, 28 Vand. L. Rev. 1277, 1303 (1975).

*Id.*, at 353; *Dean Milk Co.* v. *Madison*, 340 U. S., at 354. This Court does not merely accept without analysis purported local interests. Instead, it independently identifies the character of the interests and judges for itself whether alternatives will be adequate. For example, in *Dean Milk* the city attempted to justify a milk pasteurization ordinance by claiming it to be a necessary health measure. The city's assertion was not conclusive, however:

> "A different view, that the ordinance is valid simply because it professes to be a health measure, would mean that the Commerce Clause of itself imposes no limitations on state action other than those laid down by the Due Process Clause, save for the rare instance where a state artlessly discloses an avowed purpose to discriminate against interstate goods." *Ibid.*

In an independent assessment of the asserted purpose, the Court determined exactly how the ordinance protected public health and then concluded that other measures could accomplish the same ends. *Id.*, at 354–356. The city's public health purpose therefore did not justify the discrimination, and the ordinance violated the Commerce Clause.

## B

With this background, the unconstitutional discrimination in the Maryland statute becomes apparent. No facial inequality exists; §§ (b) and (c) preclude all refiners and producers from marketing gasoline at the retail level. But given the structure of the retail gasoline market in Maryland, the effect of §§ (b) and (c) is to exclude a class of predominantly out-of-state gasoline retailers while providing protection from competition to a class of nonintegrated retailers that is overwhelmingly composed of local businessmen. In 1974, of the 3,780 gasoline service stations in the State, 3,547 were operated by nonintegrated local retail dealers. App. 191, 569, 755. Of the 233 company-operated stations, 197 belonged to out-of-state integrated producers or refiners. *Id.*, at 190–191. Thirty-four were operated by nonintegrated companies that would not have been affected immediately by the Maryland statute.[5] *Ibid.* The only in-state integrated petroleum firm, Crown Central Petroleum, Inc., operated just two service stations. *Id.*, at 189. Of the class of stations statutorily insulated from the competition of the out-of-state integrated firms, then, more than 99% were operated by local business interests. Of the class of enterprises excluded entirely from participation in the retail gasoline market, 95% were out-of-state firms, operating 98% of the stations in the class. *Ibid.*

The discrimination suffered by the out-of-state integrated producers and refiners is significant. Five of the excluded enterprises, Ashland Oil, Inc., BP Oil, Inc., Kayo Oil Co., Petroleum Marketing Corp., and Southern States Cooperative, Inc., market nonbranded gasoline through price competition rather than through brand recognition. Of the 98 stations marketing gasoline in this manner, all but 6 are company operated. The company operations result from the dominant fact of price competition marketing. According to repeated testimony from petroleum economics experts and officers of price marketers—testimony that the trial court did not discredit—such nonbranded stations can compete successfully only if they have day-to-day control of the retail price of their products, the hours of operation of their stations, and related business details. App. 320, 357, 370–371, 449–451, 503–504,

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[5] In 1974 Fisca Oil Co., Giant Food, Inc., Hi-Way Oil, Inc., Homes Oil Co., Hudson Oil Co., Midway Petroleum, National Oil Co., Pantry Pride, Savon Gas Stations, and Sears, Roebuck & Co. operated gasoline stations in Maryland. Because none of these organizations produced or refined petroleum at that time, the statute would not have restricted their operations. It should be noted, however, that the statute will reach any of these firms deciding to integrate backwards from retailing to refining or producing. After this suit was filed, Hudson Oil Co. acquired a refinery and thus became another out-of-state business subject to the ban of §§ (b) and (c). App. 518–519.

517, 529–530; Joint App. to Jurisdictional Statements 102a *et seq.* Only with such control can sufficient sales volume be achieved to produce satisfactory profits at prices two to three cents a gallon below those of the major branded stations. Dealer operation of stations precludes such control because of the illegality of vertical price fixing. See, *e. g.*, 15 U. S. C. § 1 (1976 ed.); *White Motor Co.* v. *United States*, 372 U. S. 253 (1963). Therefore, because §§ (b) and (c) forbid company operations, these out-of-state competitors will have to abandon the Maryland retail market altogether. App. 100, 357–358, 455, 519; Joint App. to Jurisdictional Statements 103a *et seq.*[6] For the same reason 32 other out-of-state national nonbranded integrated marketers, who operate their own stations without dealers, will be precluded from entering the Maryland retail gasoline market.

The record also contains testimony that the discrimination will burden the operations of major branded companies, such as appellants Exxon, Phillips, Shell, and Gulf, all of which are out-of-state firms. Most importantly, §§ (b) and (c) will preclude these companies, as well as those mentioned in the previous paragraph, from competing directly for the profits of retail marketing. According to Richard T. Harvin, retail sales manager for Exxon's eastern marketing region, Exxon's company-operated stations in Maryland annually return 15% of the company's investment—a profit of $700,000 in 1974. App. 316. Sections (b) and (c) will force this return to be shared with the local dealers. In addition, the ban of the sections will preclude the majors from enhancing brand recognition and consumer acceptance through retail outlets with company-controlled standards. *Id.*, at 316, 320, 647, 668–669. Their ability directly to monitor consumer preferences and reactions will be diminished. *Id.*, at 315, 649, 669. And their opportunity for experimentation with retail marketing techniques will be curtailed. *Id.*, at 316–317, 647–649, 669. In short, the divestiture provisions, which will require the appellant majors to cease operation of property valued at more than $10 million, will inflict significant economic hardship on Maryland's major brand companies, all of which are out-of-state firms.

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[6] The sections will force Ashland to divest 17 stations in which it has invested $2,381,385. *Id.*, at 257, 258–259. Petroleum Marketing has 21 stations valued at $2,043,710. *Id.*, at 656.

Similar hardship is not imposed upon the local service station dealers by the divestiture provisions. Indeed, rather than restricting their ability to compete, the Maryland Act effectively and perhaps intentionally improves their competitive position by insulating them from competition by out-of-state integrated producers and refiners. In its answers to the various complaints in this case, the State repeatedly conceded that the Act was intended to protect "the retail dealer as an independent businessman [by] reducing the control and dominance of the vertically integrated petroleum producer and refiner in the retail market." *Id.*, at 33; see *id.*, at 51, 54, 104, 128, 132, 145, 147. At trial the State's expert said that the legislation would have the effect of protecting the local dealers against the out-of-state competition. *Id.*, at 613. In short, the foundation of the discrimination in this case is that the local dealers may continue to enter retail transactions and to compete for retail profits while the statute will deny similar opportunities to the class composed almost entirely of out-of-state businesses.[7]

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[7] Another indication of the discrimination against out-of-state business was the amendment of the original legislative proposal to exempt wholesalers of gasoline from the divestiture requirements. The author of the proposal intended to ban retailing by wholesalers and "not to discriminate against one class as to another." App. 568. On cross-examination he was asked why the exemption was enacted. He replied:

"It was up to the General Assembly to make that decision. Apparently the wholesalers were represented at the testimony in the hearings. . . . I did hear at a later date that they wanted to be exempt from it because

With discrimination proved against interstate commerce, the burden falls upon the State to justify the distinction with legitimate state interests that cannot be vindicated with more evenhanded regulation. On the record before the Court, the State fails to carry its burden. It asserts only in general terms a desire to maintain competition in gasoline retailing. Although this is a laudable goal, it cannot be accepted without further analysis, just as the Court could not accept the mere assertion of a public health justification in *Dean Milk*. Here, the State ignores the second half of its responsibility; it does not even attempt to demonstrate why competition cannot be preserved without banning the out-of-state interests from the retail market.

The State's showing may be so meager because any legitimate interest in competition can be vindicated with more evenhanded regulation. First, to the extent that the State's interest in competition is nothing more than a desire to protect particular competitors—less efficient local businessmen—from the legal competition of more efficient out-of-state firms, the interest is illegitimate under the Commerce Clause. A national economy would hardly flourish if each State could effectively insist that local nonintegrated dealers handle product retailing to the exclusion of out-of-state integrated firms that would not have sufficient local political clout to challenge the influence of local businessmen with their local government leaders.[8] Each State would be encouraged to "legislate accord-

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some of the wholesalers being local jobbers had no investment or financial activity or engagement with the producer-refiner so they wanted to plea upon the mercy of the committee so to speak . . . .

. . . . .

"Q. You have no information then as to why the Legislature of Maryland chose to make that discrimination? A. Not other than hearsay as to the general data that these men were local businessmen, had no definite tie in with the refinery . . . ." *Id.*, at 568–569.

[8] There is support in the record for the inference that the Maryland Legislature passed the divestiture provisions in response to the pleas of local

ing to its estimate of its own interests, the importance of its own products, and the local advantages or disadvantages of its position in a political or commercial view." J. Story, Commentaries on the Constitution of the United States § 259 (4th ed. 1873), quoted in *H. P. Hood & Sons* v. *Du Mond*, 336 U. S. 525, 533 (1949). See also, *e. g.*, The Federalist, Nos. 7, 11, 12 (Hamilton), No. 42 (Madison). The Commerce Clause simply does not countenance such parochialism.

Second, a legitimate concern of the State could be to limit the economic power of vertical integration. But nothing in the record suggests that the vertical integration that has

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gasoline dealers for protection against the competition of both the price marketers and the major oil companies. For example, the executive director of the Greater Washington/Maryland Service Station Association, which represents almost 700 local Maryland dealers, testified before the Economic Matters Committee of the Maryland Senate:

"I would like to begin by telling you gentlemen that these are desperate days for service station dealers. . . .

. . . . .

"Now beset by the critical gasoline supply situation, the squeeze by his landlord-supplier and the shrinking service and tire, battery and accessory market, the dealer is now faced with an even more serious problem.

"That is the sinister threat of the major oil companies to complete their takeover of the retail-marketing of gasoline, not just to be in competition with their own branded dealers, but to squeeze them out and convert their stations to company operation.

. . . . .

"Our oil industry has grown beyond the borders of our country to where its American character has been replaced by a multinational one.

"Are the legislators of Maryland now about to let this octopus loose and unrestricted in the state of Maryland, among our small businessmen to devour them? We sincerely hope not.

"The men that you see here today are the back-bone of American small business. . . .

"We are here today asking you, our own legislators to protect us from an economic giant who would take away our very livelihood and our children's future in its greed for greater profits. Please give us the protection we need to save our stations." App. 755, 756, 761.

already occurred in the Maryland petroleum market has inhibited competition. Indeed, the trial court found that the retail market, dominated by 3,547 dealer outlets constituting more than 90% of the State's service stations, is highly competitive.[9] Therefore, the State has shown no need for the divestiture of existing company-owned stations required by § (c). The legitimacy of any concern about future integration, which could support the discrimination of § (b), is suspect because of the exemption granted wholesalers, which, not surprisingly, are local businesses able to influence the state legislature.[10] See n. 7, *supra*.

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[9] From the facts stipulated by the parties, the trial court found:

"Retail petroleum marketing in the State of Maryland is and has been a highly competitive industry. This is a result of the number and location of available facilities, the comparatively small capital costs for entering the business, the mobility of the purchaser at the time of purchasing the products, the relative interchangeability of one competitor's products with another in the mind of the consumer, the visibility of price information, and the many choices the consumer has in terms of prices, brands, and services offered." Joint App. to Jurisdictional Statements 99a.

The continuing competitive nature of the Maryland gasoline market provided one basis for the trial court's holding that the State had not "demonstrated a real and substantial relation to the object sought to be attained by the means selected[;] the evidence presented before it indicates that the statute is inversely related to the public welfare." *Id.*, at 131a–132a. The trial court therefore considered the statute unconstitutional.

[10] The trial court entered several findings about the integration of the oil companies and the need for divestiture:

"Apart from restraining free competition, it was shown that divestiture would be harmful to competition in the industry, and would primarily serve to protect the independent dealers rather than the public at large. There was no proven detrimental effect upon the retail market caused by company-owned-and-operated stations which could not be curbed by federal and state anti-trust laws.

. . . . .

"The court also finds from the preponderance of the evidence that the law will preclude all of some thirty-two producer-refiners not now in the State from ever entering the competitive market in Maryland, and vertical

Third, the State appears to be concerned about unfair competitive behavior such as predatory pricing or inequitable allocation of petroleum products by the integrated firms. These are the only examples of specific misconduct asserted in the State's answers. App. 33–34, 54–55, 81–83, 109–111, 133–134, 148–149. But none of the concerns support the discrimination in §§ (b) and (c). There is no proof in the record that any significant portion of the class of out-of-state firms burdened by the divestiture sections has engaged in such misconduct. Furthermore, predatory pricing and unfair allocation already have been prohibited by both state and federal law. See, *e. g.*, Emergency Petroleum Allocation Act of 1973, 87 Stat. 628, 15 U. S. C. § 751 *et seq.* (1976 ed.); Energy Policy and Conservation Act, § 461, 89 Stat. 955, 15 U. S. C. § 760g (1976 ed.); Maryland Motor Fuel Inspection Law, Md. Code Ann., Art. 56, § 157E (f) (Supp. 1977); Maryland Antitrust Act, Md. Com. Law Code Ann. § 11–201 *et seq.* (1975); Maryland Unfair Sales Act, Md. Com. Law Code Ann. § 11–401 *et seq.* (1975). Less discriminatory legislation, which would regulate the leasing of all service stations, not just those owned by the out-of-state integrated producers and refiners, could prevent whatever evils arise from short-

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integration will be prohibited. Neither effect is in the public interest since competition is essentially for consumer benefit.

"Noteworthy also is the fact that the original draft of the law included wholesalers in the prohibition against retail selling. The final draft of the law eliminated wholesalers, for the sole reason, according to Mr. Coleman, that the wholesalers requested their elimination from the act. There is no evidence whatsoever relative to why wholesalers should have been included initially, nor how the general public benefited from their exemption.

"In all the more than one hundred eighty-five pounds of pleadings, motions, briefs, exhibits and depositions before this court, there is no concrete evidence that the act was justified as to the classes of operators singled out to be affected in order to promote the general welfare of the citizens of the State. *Rather, it is apparent that the entire bill is designed to benefit one class of merchants to the detriment of another.*" *Id.*, at 130a–131a (emphasis supplied).

term leases. Cf. Maryland Gasoline Products Marketing Act, Md. Com. Law Code Ann. § 11–304 (g) (Supp. 1977).[11]

In sum, the State has asserted before this Court only a vague interest in preserving competition in its retail gasoline market. It has not shown why its interest cannot be vindicated by legislation less discriminatory toward out-of-state retailers. It therefore has not met its burden to justify the discrimination inherent in §§ (b) and (c), and they violate the Commerce Clause.

## II

The arguments of the Court's opinion, the Maryland Court of Appeals decision,[12] and appellees do not remove the unconstitutional taint from the discrimination inherent in §§ (b) and (c).

### A

The Court offers essentially three responses to the discrimination in the retail gasoline market imposed by the divestiture provisions.[13] First, the Court says that the discrimination

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[11] This statute states:

"(g) *Distributor may not unreasonably withhold certain consents* . . . The distributor may not unreasonably withhold his consent to any assignment, transfer, sale, or renewal of a marketing agreement. . . ."

[12] 279 Md. 410, 370 A. 2d 1102 (1977). The trial court, the Circuit Court for Anne Arundel County, Md., did not address the question whether §§ (b) and (c) unconstitutionally discriminated against interstate commerce. It held that the statute offended substantive due process, in violation of the Maryland Declaration of Rights, Art. 23.

[13] The Court also notes that §§ (b) and (c) do not discriminate against interstate goods and do not favor local producers and refiners. While true, the observation is irrelevant because it does not address the discrimination inflicted upon retail marketing in the State. Cf. Part II–B, *infra*.

Footnote 16 of the Court's opinion, *ante*, at 126–127, suggests that unconstitutional discrimination does not exist unless there is an effect on the quantity of out-of-state goods entering a State. This is too narrow a view of the Commerce Clause. First, interstate commerce consists of far more than mere production of goods. It also consists of transactions—of repeated buying and selling of both goods and services. By focusing excluagainst the class of out-of-state producers and refiners does not violate the Commerce Clause because the State has not imposed similar discrimination against other out-of-state retailers. *Ante*, at 125–126. This is said to distinguish the present case from *Hunt* v. *Washington Apple Advertising Comm'n*. In fact, however, the unconstitutional discrimination in *Hunt* was not against all out-of-state interests. North Carolina had enacted a statute requiring that apples marketed in closed containers within the State bear " 'no grade other than the applicable U. S. grade or standard.' " 432 U. S., at 335. The Commission contended that the provision discriminated against interstate commerce because it prohibited the display of superior Washington State apple grading marks. The Court did not strike down the provision because it discriminated against the marketing techniques of *all* out-of-state growers. The provision imposed no discrimination on growers from States that employed only the United States Department of Agriculture grading system.[14] Despite this

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sively on the quantity of goods, the Court limits the protection of the Clause to producers and handlers of goods before they enter a discriminating State. In our complex national economy, commercial transactions continue after the goods enter a State. The Court today permits a State to impose protectionist discrimination upon these later transactions to the detriment of out-of-state participants. Second, the Court cites no case in which this Court has held that a burden on the flow of goods is a prerequisite to establishing a case of unconstitutional discrimination against interstate commerce. Neither *Hunt* nor *Dean Milk* contains such a holding. In both of those cases the Court upheld the claims of discrimination; in neither did it say that a burden on the wholesale flow of goods was a necessary part of its holding. Regarding *Hunt*, the Court cites to 432 U. S., at 347, which discusses only whether the appellants had met the $10,000 amount-in-controversy requirement of 28 U. S. C. § 1331. As explained in Part II–B, *infra*, this case presents a threat to the flow of gasoline in Maryland identical to the threat to the flow of milk in *Dean Milk*.

[14] Growers from 13 States marketed apples in North Carolina. Six of the States did not have state grading systems apart from the U. S. D. A. regulations. 432 U. S., at 349.

lack of universal discrimination, the Court declared the provision unconstitutional because it discriminated against a single segment of out-of-state marketers of apples, namely, the Washington State growers who employed the superior grading system. In this regard, the Maryland divestiture provisions are identical to, not distinguishable from, the North Carolina statute in *Hunt*. Here, the discrimination has been imposed against a segment of the out-of-state retailers of gasoline, namely, those who also refine or produce petroleum.

To accept the argument of the Court, that is, that discrimination must be universal to offend the Commerce Clause, naively will foster protectionist discrimination against interstate commerce. In the future, States will be able to insulate in-state interests from competition by identifying the most potent segments of out-of-state business, banning them, and permitting less effective out-of-state actors to remain. The record shows that the Court permits Maryland to effect just such discrimination in this case. The State bans the most powerful out-of-state firms from retailing gasoline within its boundaries. It then insulates the forced divestiture of 199 service stations from constitutional attack by permitting out-of-state firms such as Pantry Pride, Fisca, Hi-Way, and Midway to continue to operate 34 gasoline stations. Effective out-of-state competition is thereby emasculated—no doubt, an ingenious discrimination. But as stated at the outset, "the commerce clause forbids discrimination, whether forthright or ingenious." *Best & Co.* v. *Maxwell,* 311 U. S., at 455.

Second, the Court contends, as a subpart of its primary argument, that the discrimination in *Hunt* "raised the cost of doing business for out-of-state dealers, and, in various other ways, favored the in-state dealer in the local market. 432 U. S., at 351–352. No comparable claim can be made here." *Ante,* at 126. Once it is seen that the discrimination in *Hunt* raised the cost of doing business for only one group of the out-of-state marketers of apples, the fallacy of the Court's argument appears. In fact, here the burden imposed upon the class of out-of-state retailers subject to the discrimination of §§ (b) and (c) far exceeds the burdens in *Hunt*. In *Hunt* the statute merely increased costs and deprived the Washington growers of the competitive advantages of the use of their grading system. Here, the statute *bans* the refiners and producers from the retail market altogether—a burden that lacks comparability with the effects in *Hunt* only because it is more severe.

Third, the Court asserts without citation: "The fact that the burden of a state regulation falls on some interstate companies does not, by itself, establish a claim of discrimination against interstate commerce." *Ante*, at 126. This proposition is correct only to the extent that it is incomplete; it does not apply to the facts present here. It is true that merely demonstrating a burden on some out-of-state actors does not prove unconstitutional discrimination. But when the burden is significant, when it falls on the most numerous and effective group of out-of-state competitors, when a similar burden does not fall on the class of protected in-state businessmen, and when the State cannot justify the resulting disparity by showing that its legislative interests cannot be vindicated by more evenhanded regulation, unconstitutional discrimination exists. The facts of this litigation demonstrate such discrimination, and the Court does not argue persuasively to the contrary.

### B

The contentions of the Maryland Court of Appeals, which also found no violation of the Commerce Clause, are no more convincing than the arguments of the Court's opinion. First, the Court of Appeals reasoned that §§ (b) and (c) did not discriminate against the class of out-of-state refiners and producers because the wholesale flow of petroleum products into the State was not restricted. 279 Md. 410, 431, 370 A. 2d 1102, 1114 (1977). This supposedly distinguished the present facts from those of *Dean Milk Co.* v. *Madison,* which involved unconstitutional discrimination against interstate commerce. To begin with, however, the distinction drawn by the Court of Appeals is basically irrelevant. The Maryland statute has not effected discrimination with regard to the wholesaling or interstate transport of petroleum. The discrimination exists with regard to retailing. The fact that gasoline will continue to flow into the State does not permit the State to deny out-of-state firms the opportunity to retail it once it arrives.

Furthermore, *Dean Milk* cannot be distinguished on the ground asserted by the Court of Appeals. There, this Court invalidated § 7.21 of the General Ordinances of the city of Madison (1949), which outlawed the local sale of milk not pasteurized within five miles of the city. The section did not legally or effectively block the flow of out-of-state milk into Madison to any greater extent than the restrictions on sales of gasoline by out-of-state companies block the flow of gasoline here. In *Dean Milk* out-of-state producers could bring their milk to Madison, have it pasteurized in Madison, and sell it in Madison without violating § 7.21. If the flow of milk were at all restricted, it was merely because the out-of-state producers chose not to deal with the Madison pasteurizers. Similarly, the flow of gasoline into Maryland may be restricted if the out-of-state producers and refiners choose not to supply the dealers who replace the company-owned operations.[15]

Second, the Court of Appeals said the Maryland legislation did not offend the Commerce Clause because the legislature intended to preserve competition, not to discriminate against interstate commerce. 279 Md., at 431, 370 A. 2d, at 1114.

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[15] In fact, the disruption of the flow of gasoline in this case could be greater than the disruption of the flow of milk in Madison. The record supports the proposition that the ban on company operations may so unsettle the wholesale and refining enterprises of the independent price marketers that they will not be able profitably to supply gasoline to the stations of nonintegrated retailers in Maryland. App. 504–505, 509, 531.

With this argument, the court fell into the same trap that confines the State's proffered justifications for the discrimination of §§ (b) and (c). To begin with, the fact that no discrimination was intended is irrelevant where, as here, discriminatory effects result from the statutory scheme. Furthermore, the fact that the legislature might have had a laudable intent when it passed the law cannot by itself justify the divestiture provisions. The State must also show that its interests cannot be vindicated by less discriminatory alternatives. The Court of Appeals erroneously failed to require such a showing from the appellees.

Third, the Court of Appeals resurrected the outdated notion that retailing is merely local activity not subject to the strictures of the Commerce Clause. *Id.*, at 432, 370 A. 2d, at 1114–1115, citing *Crescent Oil Co.* v. *Mississippi*, 257 U. S. 129 (1921). In *Crescent Oil* the Court said that the operation of cotton gins was local manufacturing rather than interstate commerce. As explained at the beginning of Part I of this opinion, however, the interstate character of the retail gasoline market and 57 years of intervening constitutional and economic development prevent the application of *Crescent Oil* to the facts of this litigation. See nn. 3 and 4, and accompanying text, *supra*.

### C

Finally, nothing in the argument of the appellees saves the distinctions in §§ (b) and (c) from the taint of unconstitutionality. First, the State argues that discrimination against interstate commerce has not occurred because "[n]o nexus between interstate as opposed to local interests inheres in the production or refining of petroleum." Brief for Appellees 23. Although this statement might be correct in the abstract, it is incorrect in reality, given the structure of the Maryland petroleum market. Due to geological formation as so far known, no petroleum is produced in Maryland; due to the economies of production and refining, as well as to the geology, no petroleum is refined in Maryland. As a matter of actual fact, then, an inherent nexus does exist between the out-of-state status of producers and refiners and the distribution and retailing of gasoline in Maryland. The Commerce Clause does not forbid only legislation that discriminates under all factual circumstances. It forbids discrimination in effect against interstate commerce on the specific facts of each case. If production or refining of gasoline occurred in Maryland, §§ (b) and (c) might not be unconstitutional. Under those different circumstances, however, the producers and refiners would have a fair opportunity to influence their local legislators and thereby to prevent the enactment of economically disruptive legislation. Under those circumstances, the economic disruption would be felt directly in Maryland, which would tend to make the local political processes responsive to the problems thereby created. Under those circumstances, §§ (b) and (c) might never have been passed. In this case, however, the economic disruption of the sections is visited upon out-of-state economic interests and not upon in-state businesses. One of the basic assumptions of the Commerce Clause is that local political systems will tend to be unresponsive to problems not felt by local constituents; instead, local political units are expected to act in their constituents' interests.[16] One of the basic purposes of the Clause, therefore, is to prevent the vindication of such self-interest from unfairly burdening out-of-state concerns and thereby disrupting the national economy.

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[16] Given the Nation's experience under the Articles of Confederation, the assumption is not an unreasonable one. At that time authority to regulate commerce rested with the States rather than with Congress. The pursuit by each State of the particular interests of its economy and constituents nearly wrecked the national economy. "The almost catastrophic results from this sort of situation were harmful commercial wars and reprisals at home among the States . . . ." P. Hartman, State Taxation of Interstate Commerce 2 (1953), citing, *e. g.*, The Federalist, Nos. 7, 11, 22 (Hamilton), No. 42 (Madison).

Second, appellees argue, as did the Court of Appeals, that §§ (b) and (c) do not discriminate impermissibly because the Maryland Legislature passed them with the intent to preserve competition. As explained above, however, the mere assertion of a laudable purpose does not carry the State's burden to justify the discriminatory effects of the statute. See Parts I–B and II–B, *supra.*

Third, appellees rely upon the Court of Appeals' contention that unconstitutional discrimination against interstate commerce can be found only where the flow of interstate goods is curtailed. Appellees' assertion fares no better than did the court's because the appellees fail to show how the effect on the flow of interstate goods varies in kind between this case and *Dean Milk.* See Part II–B, *supra.*

## III

The Court's decision brings to mind the well-known words of Mr. Justice Cardozo:

> "To give entrance to [protectionism] would be to invite a speedy end of our national solidarity. The Constitution was framed under the dominion of a political philosophy less parochial in range. It was framed upon the theory that the peoples of the several states must sink or swim together, and that in the long run prosperity and salvation are in union and not division." *Baldwin* v. *G. A. F. Seelig, Inc.*, 294 U. S. 511, 523 (1935).

Today, the Court fails to heed the Justice's admonition. The parochial political philosophy of the Maryland Legislature thereby prevails. I would reverse the judgment of the Maryland Court of Appeals.

## APPENDIX P.—H.R. 6722 AS AMENDED BY THE SMALL BUSINESS COMMITTEE, JULY 1, 1980

### EXHIBIT 1: COMMITTEE PRINT OF H.R. 6722, AS AMENDED BY THE HOUSE SMALL BUSINESS COMMITTEE ON JULY 1, 1980

**[COMMITTEE PRINT]**

JULY 11, 1980

96TH CONGRESS
2D SESSION

# H. R. 6722

To amend the Small Business Act to provide special loan guarantees to small business concerns for the acquisition of motor fuel service stations, to require the divorcement of such stations from operation by certain producers and refiners of motor fuels, to control sales by producers and refiners of motor fuels, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 6, 1980

Mr. BEDELL (for himself, Mr. SMITH of Iowa, Mr. HANLEY, Mr. HALL of Ohio, Mrs. SNOWE, and Mr. TAUKE) introduced the following bill; which was referred jointly to the Committees on Small Business and Interstate and Foreign Commerce

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# A BILL

To amend the Small Business Act to provide special loan guarantees to small business concerns for the acquisition of motor fuel service stations, to require the divorcement of such stations from operation by certain producers and refiners of motor fuels, to control sales by producers and refiners of motor fuels, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

# Amendment in the Nature of a Substitute to H.R. 6722 Ordered Reported by the Committee on Small Business on July 1, 1980

Strike out all after the enacting clause and insert in lieu thereof the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Small Business Motor Fuel Marketer Preservation Act of 1980".

FINANCIAL ASSISTANCE TO SMALL BUSINESS CONCERNS ACQUIRING MOTOR FUEL SERVICE STATIONS

SEC. 2. (a) Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended by inserting after the first sentence the following new sentence: "Notwithstanding the proviso in the preceding sentence, the Administration may participate on a deferred basis in any loan under this section to any dealer acquiring a motor fuel service station without regard to whether such loan is primarily for the acquisition of land.".

(b) Section 3 of the Small Business Act (15 U.S.C. 632) is amended by adding at the end thereof the following: "The terms 'motor fuel service station' and 'dealer' have the meanings set forth in paragraphs (8) and (10)(B), respectively, of section 3(f) of the Small Business Motor Fuel Marketer Preservation Act of 1980.".

### DIVORCEMENT OF MOTOR FUEL SERVICE STATIONS; LIMITATION ON RETAIL SALES OF MOTOR FUEL BY REFINERS

SEC. 3. (a)(1) Notwithstanding any other provision of law, it shall be unlawful for any refiner, other than an independent refiner or a small refiner, to operate any motor fuel service station in the United States.

(2)(A) Any interest in any motor fuel service station may be disposed of by a refiner to any person other than the dealer at such station only if such dealer was offered a right of first refusal of an offer made by the refiner to sell such interest.

(B) For purposes of subparagraph (A), a dealer at a motor fuel service station is considered to be offered a right of first refusal of an offer made by the refiner to sell an interest in the station only if—

(i) the refiner gives the dealer, in writing, an exclusive sixty-day option to accept an offer to sell such interest, and

(ii) in any case in which, during such sixty-day period, the dealer makes a counteroffer, in writing, to purchase such interest at a different price, the refiner, during the thirty-day period following the date of the counteroffer—

(I) agrees, in writing, to the counteroffer, or

(II) submits to the dealer, in writing, a revised offer to sell the interest to the dealer at a price to be determined by an independent appraisal meeting the standards prescribed by the Small Business Administration pursuant to subparagraph (C) and undertakes such an appraisal within such time and in such manner as shall be prescribed by the Administration by regulation.

The cost of such appraisal shall be borne equally by the refiner and the dealer.

(C) The Small Business Administration shall prescribe by regulation standards which must be met with respect to an appraisal in order for such appraisal to be considered an independent appraisal for purposes of this paragraph.

(b)(1) Notwithstanding any other provision of law, it shall be unlawful for any refiner to sell at motor fuel service stations operated by that refiner in the United States during any applicable calendar year, an amount of motor fuel greater than—

(A) the amount of motor fuel sold by that refiner at motor fuel service stations in the United States during calendar year 1978, plus

(B) the amount of motor fuel which is 50 per centum of the excess of the amount of motor fuel manufactured by that refiner during that applicable calendar year, over the amount of motor fuel sold at motor fuel service stations by that refiner in the United States during calendar year 1978, plus

(C) the amount of motor fuel purchased by that refiner from others during that applicable calendar year.

(2) For purposes of this subsection, the term "applicable calendar year" means a calendar year ending after the effective date of this subsection.

(c)(1) Notwithstanding any other provision of law, except as provided in paragraph (2), it shall be unlawful for any refiner to sell any motor fuel at any time at any point of transfer at differing prices to purchasers of the same basic units of such motor fuel, except that nothing in this paragraph shall be construed to prevent differentials in prices of any motor fuel which make only due allowance for differences in the cost of manufacture, sale, or delivery of such motor fuel resulting from the differing methods or quantities in which such motor fuel is sold or delivered. A refiner shall be considered to have violated the provisions of this paragraph in any case in which the refiner withholds some of the refiner's available motor fuel from any sale, at a point of transfer of the motor fuel from the refiner to purchasers of the motor fuel, and subsequently sells such motor fuel at motor fuel service stations operated by the refiner at prices below the prices at which, if the refiner had purchased the motor fuel at the point of transfer at the price then in effect, the refiner would have had to sell such motor fuel at such stations in order to obtain the same profits on the sale.

(2) Nothing in paragraph (1) shall be construed to prevent a refiner from charging a uniform and reasonable surcharge in connection with sales of motor fuel to persons as consideration for the use by such persons of a trademark, trade name, service mark, or other identifying symbol or name and any services associated with such use.

(d)(1)(A) Notwithstanding any other provision of law, it shall be unlawful for any person to restrain, interfere with, or in any way prevent the purchasing from another, the storing, or the selling of motor fuel by any dealer.

(B) Subparagraph (A) shall not apply with respect to any provision of any contract or agreement to the extent that the provision requires the purchasing of any motor fuel by any dealer exclusively from any refiner or distributor, but only if such provision provides that such dealer may purchase such motor fuel from any other person if such motor fuel is not readily available from such refiner or distributor.

(2) Notwithstanding any other provision of law, it shall be unlawful for any dealer, at a motor fuel service station displaying a trademark, trade name, service mark, or other identifying symbol or name owned by a refiner, to sell motor

fuel which is not provided by such refiner without providing reasonable notice at the point of sale to each purchaser of such motor fuel that such motor fuel is not refined by such refiner.

(e)(1) Not later than ninety days after the date of the enactment of this Act, and annually thereafter, each refiner shall provide in writing to the Federal Trade Commission—

(A) the number of gallons of motor fuel sold at motor fuel service stations operated by the refiner during the preceding calendar year by the refiner in the United States,

(B) the number of gallons of motor fuel manufactured during the preceding calendar year by the refiner in the United States,

(C) the number of barrels of crude oil produced during the preceding calendar year by the refiner, and

(D) the number of barrels of crude oil refined during the preceding calendar year by the refiner.

(2) Not later than ninety days after the date of the enactment of this Act each refiner shall provide in writing to the Federal Trade Commission the information described in paragraph (1) with respect to calendar year 1978.

(3) The Federal Trade Commission shall not require from any person information referred to in the preceding provisions of this subsection to the extent that the Commission is

able to obtain such information from agencies or departments of the United States.

(f) For purposes of this section:

(1)(A) The term "producer" means any person who is engaged in the production of crude oil or who owns crude oil when it is produced.

(B) Such term includes any related person with respect to such person.

(2)(A) The term "refiner" means—

(i) any person engaged in the refining of motor fuel, and

(ii) any producer for whom refining of crude oil produced by such producer, or owned by such producer when such crude oil is produced, is performed under contract.

(B) Such term includes, when used in connection with any person described in clause (i) or (ii) of subparagraph (A), any related person with respect to such person.

(3) The term "independent refiner" means a refiner who obtained, directly or indirectly, in calendar year 1978, more than 70 per centum of the refiner's refinery input of domestic and imported crude oil from producers who are not related persons referred to in paragraph (2)(B)

(4) The term "small refiner" means a refiner whose total refinery capacity does not exceed one hundred and seventy five thousand barrels per day.

(5) The term "related person" means, with respect to any other person—

(A) a person who holds a significant ownership interest in such other person;

(B) a person in whom such other person holds a significant ownership interest; and

(C) a person in whom a third person holds a significant ownership interest while holding a significant ownership interest in such other person.

(6) The term "significant ownership interest" means—

(A) with respect to any corporation, the single largest share in value of the outstanding stock of such corporation,

(B) with respect to a partnership, the single largest share in the profits or capital of such partnership, and

(C) with respect to an estate or trust, the single largest share of the beneficial interests in such estate or trust.

For purposes of determining significant ownership interest, an interest owned by or for a corporation, partnership, trust, or estate shall be considered as owned directly both by itself and proportionately by its shareholders, partners, or beneficiaries, as the case may be.

(7) The term "motor fuel" means gasoline, diesel fuel, alcohol, and any mixture of any of the foregoing, suitable for use as a fuel in self-propelled vehicles designed primarily for use on public streets, roads, and highways.

(8) The term "motor fuel service station" means any facility at which motor fuel is sold at retail.

(9) The term "sell at retail" means to sell to the general public for ultimate consumption.

(10)(A) Except as provided in subparagraph (B), the term "dealer" means a person who occupies as a retailer a motor fuel service station.

(B)(i) When used in subsection (d)(2), the term "dealer" means, with respect to a refiner, a person described in subparagraph (A) who occupies the motor fuel service station under lease or rental agreement with the refiner.

(ii) Notwithstanding clause (i), a person described in such subparagraph shall not be considered a dealer if the lease or rental agreement is with a refiner in connection with whom such person is a related person referred to in paragraph (2)(B).

(11) The term "operate" means, when used in connection with a motor fuel service station, to engage at such station in the business of selling motor fuel at retail through any—

(A) employee,

(B) commissioned agent,

(C) person operating such station pursuant to a contract with a refiner, or

(D) person acting on behalf of the refiner or under the refiner's supervision,

whose duties include the sale of such motor fuel.

(12) The term "basic unit" means, in connection with motor fuel—

(A) a dealer tankwagon or transport load;

(B) a railroad tank car load;

(C) a barge load; and

(D) a pipeline tender.

(13) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, joint-stock companies, trustees and receivers in bankruptcy and reorganization, common-law trusts, and any organized group, whether or not incorporated.

(14) The term "United States" means, when used in a geographic sense, the several States, the District

of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, Guam, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(g)(1) Any person who violates any provision of subsection (a)(1) shall, upon conviction, be punished by a fine of not to exceed $50,000 per month for each motor fuel service station operated during such month in violation of such subsection.

(2) Any person who violates any provision of subsection (a)(2) shall, upon conviction, be punished by a fine not to exceed $50,000 for each such violation.

(3) Any person who violates any provision of subsection (b) shall, upon conviction, be punished by a fine not to exceed $25,000 for each twenty-five thousand gallons of motor fuel sold in excess of the amount permitted under such subsection.

(4) Any person who sells motor fuel in violation of subsection (c) shall, upon conviction, be punished by a fine not to exceed $10,000 for each such sale.

(5) Any person who violates any provision of subsection (d)(1) shall, upon conviction, be punished by a fine not to exceed $50,000 for each such violation.

(6) Any person who violates any provision of subsection (d)(2) shall, upon conviction, be punished by a fine not to exceed $10,000 for each such violation.

(7) It shall be the duty of the Federal Trade Commission to commence a civil action for appropriate relief, including a permanent or temporary injunction, whenever any person violates any provision of subsection (a), (b), (c), or (d). Any action under this paragraph may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance.

(h)(1) If any person fails to comply with the requirements of this section, any other person directly affected by such failure may maintain a civil action against such person failing to comply with such requirements for damages and appropriate equitable relief, including temporary and permanent injunctive relief. If the plaintiff prevails in any action under this section, the plaintiff shall be entitled to reasonable attorney and expert witness fees to be paid by the defendant, except that in any case in which the court determines that only nominal damages are to be awarded to the plaintiff, the court may, in, its discretion, determine not to direct that such fees be paid by the defendant.

(2) Such action may be brought, without regard to the amount in controversy, in the district court of the United States in any judicial district in which the principal place of business of such person is located or in which such person is doing business.

(i)(1) Subsections (a)(1), (b), (c), and (d) of this section shall take effect one year after the date of the enactment of this Act.

(2) The Commission shall prescribe the initial regulations required by the provisions of this section before the end of the one hundred and eighty-day period beginning on the date of the enactment of this Act.

## EXHIBIT 2: A SUMMARY OF THE KEY PROVISIONS OF H.R. 6722—AS AMENDED

THE SMALL BUSINESS MOTOR FUEL MARKETER PRESERVATION ACT

HR 6722 - As Amended

Approved by the House **Small Business** Committee - July 1, 1980

SUMMARY OF KEY PROVISIONS

1. Dealers' Rights; SBA Loan Guarantees

The proprietor of any leased service station that is offered for sale by a refiner shall have the right of first refusal to purchase that station. SBA loan guarantees are made available for such purchases.

The following procedures shall be used in offering a gas station for sale to the leaseholder.

> First, the refiner shall make an offer to the lessee dealer. The dealer has 60 days to consider the offer.
>
> Second, the dealer may make a counter offer. If this is not accepted, an independent appraisal of the value of the property shall be made, subject to rules to be established by the Small Business Administration. The dealer will have the right to purchase the property at the appraised value within 30 days.

2. Divorcement; Refiner Sales Rule

Effective one year after date of enactment, major integrated refiners will be prohibited from directly operating any retail gasoline outlets. (They will be permitted to continue ownership and to operate them through lessee dealers.) The refiners who are exempted from the prohibition on operating service stations generally are those classified as small or independent refiners according to the Emergency Petroleum Allocation Act.

Small or independent refiners would be subject to a refiner sales rule. Each may sell through its own directly-operated outlets an amount of motor fuel equal to: 1) all motor fuel purchased from others; plus 2) all motor fuel manufactured by the refiner - up to 1978 direct sales total; plus 3) 50% of the excess of motor fuel manufactured above 1978 direct sales total.

3. Rack Pricing

Within one year after date of enactment, refiners will be prohibited from charging different prices to different customers if they are purchasing similar quantities of product at the same time and place. "Similar quantities" means purchases in amounts equal to dealer tankwagon, railroad car, barge capacity or pipeline tender offer. To the extent that the supplier can show actual cost differences for providing different quantities of product, the pricing may reflect those differences. Uniform and reasonable surcharges may be imposed on purchasers who will sell under a trademark or brand name (reflecting costs of advertising, credit cards, etc.)

Rack Pricing - Cont'd

Those refiners who may continue direct operation of motor fuel service stations are required to transfer product to their own outlets at a price comparable to what they charge their wholesale customers at the rack.

4. Open Supply

Effective one year after date of enactment, it shall be unlawful for anyone to interfere with the right of a dealer to purchase, store or sell motor fuel products obtained from anyone else. Agreements providing that a dealer shall buy product only from a particular supplier would be permitted only if they specify the dealer's right to purchase product elsewhere if it is not available from the regular supplier. Dealers operating branded stations must provide point-of-sale notice to customers if product being sold was not obtained from the brand-name supplier.

5. Information Required

Within three months after date of enactment, refiners must provide the following information to the Federal Trade Commission: a) total amount of motor fuel sold in refiner-operated outlets during the preceding year; b) total amount of motor fuel manufactured; c) total amount of crude oil produced; and d) total amount of crude oil refined. The FTC shall establish regulations for annual reports. To the extent that the information sought is available from other agencies of the government, the Commission shall waive reporting requirements.

6. Penalties; Enforcement

Violation of this Act shall be punishable by fines of up to $50,000 per month for each service station operated after the deadline for divorcement, and up to $25,000 for each 25,000 gallons of motor fuel sold in excess of the amount permitted by the refiner sales rule. Violation of the rack pricing provision is punishable by fines of up to $10,000 per violation. Responsibility for enforcement is given to the FTC. In addition, individuals may bring civil actions against anyone who fails to comply with the Act.

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